

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1826 **B**

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

P/S

UNITED STATES OF AMERICA,

Appellee,

vs.

ROBERT S. SCIOLINO,

Appellant.

APPEAL FROM THE JUDGMENT OF CONVICTION IN THE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NEW YORK IN INDICTMENT NO. 1973-137.

APPENDIX FOR APPELLANT

PARRINO & COOPER,
Attorneys for Appellant,
778 Ellicott Square Building,
Buffalo, New York 14203.



PAGINATION AS IN ORIGINAL COPY

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Government's Exhibits:

Exhibit 1—Typed notes of Mr. Thomas S. Shea. Marked for identification at page 93.

Exhibit 2—Pistol permit. Received in evidence at page 99.

Exhibit 3—Credentials of Mr. Shea. Marked for identification at page 132.

Defendant's Exhibits:

Exhibit 1—Photograph of the general front view of Main Chrysler—Plymouth, 2649 Bailey Avenue, as it was back in 1972 when Mr. Shea was doing the audit. Received in evidence at page 61.

Exhibit 2—Photograph of the general area of Mr. Robert Sciolino's private office as it existed back in the summer of 1972. Received in evidence at page 62.

Exhibit 3501—Grand Jury Testimony. Marked for identification at page 83.

Exhibit 4—Gun box. Received in evidence at page 130.

In the
United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

ROBERT S. SCIOLINO,

Appellant.

Relevant Docket Entries.

March 21, 1973, Filed indictment.

April 2, 1973, Arraignment—defendant enters plea of not guilty.

April 12, 1973, Filed defendant's notice of motion for discovery, bill of particulars and for other relief.

August 1, 1973, Filed Government's Bill of Particulars.

April 12, 1974, Filed Government's Amended Bill of Particulars.

April 29, 30, 1974, Trial.

May 2, 1974, Jury returns verdict of not guilty on count I and guilty on count II of indictment.

May 30, 1974, Sentence imposed as follows: one year and fined \$3,000.00. Defendant to serve 3 months and execution of the remainder of sentence suspended and defendant placed on probation for 9 months. Defendant to stand committed until fine paid.

Indictment.

May 30, 1974, Defendant's notice of appeal filed.

June 11, 1974, Filed judgment and commitment.

June 18, 1974, Filed stenographer's minutes of trial.

Indictment.

In the

DISTRICT COURT OF THE UNITED STATES

For the Western District of New York

THE UNITED STATES OF AMERICA,

vs.

ROBERT S. SCIOLINO.

November 1972 Session

No. 1973-137

Vio. 18 U.S.C. 111, 26 U.S.C. 7212

FILED:

COUNT I

The Grand Jury Charges:

That from on or about 15 July 1972, up to and including 1 September 1972, in the Western District of New York, the defendant, Robert S. Sciolino, unlawfully did forcibly

Indictment.

assault, resist, oppose, impede, intimidate and interfere with Thomas S. Shea, an employee of the Internal Revenue Service and a person designated in Title 18, United States Code, Section 1114 who was then and there engaged in and on account of the performance of his, Shea's official duties, to wit: auditing the books and records of Main Chrysler Plymouth Corporation, all in violation of Title 18 United States Code, Section 111.

COUNT II

The Grand Jury Further Charges:

That from on or about 15 July 1972, up to and including 1 September 1972, in the Western District of New York, the defendant Robert S. Sciolino, did unlawfully by threats of force endeavor to intimidate and impede one Thomas S. Shea, an employee of the internal Revenue Service, who was during this period engaged in and on account of the performance of his, Shea's, official duties, to wit: auditing the books and records of Main Chrysler Plymouth Corporation, all in violation of Title 26, United States Code, Section 7212.

JOHN T. ELFVIN,
United States Attorney,
Western District of New York,
By: Richard J. Arcara,
Assistant United States Attorney.

A True Bill:

.....,
Foreman.

Notice of Motion.

UNITED STATES DISTRICT COURT
Western District of New York

UNITED STATES OF AMERICA,

vs.

ROBERT S. SCIOLINO,

Defendant.

CR. 1973-137.

PLEASE TAKE NOTICE that on the indictment herein, the annexed affidavit of Robert S. Sciolino, the defendant, and on all other proceedings heretofore had herein, the defendant will move this court at a term thereof to be held in the United States Court House in the City of Buffalo, N.Y. on the 23rd day of April 1973, at 10 A.M., or as soon thereafter as counsel can be heard, for an order granting the following relief:

1) An order directing that the United States Attorney for the Western District of New York, disclose to the defendant Robert S. Sciolino the existence of any and all transcriptions of any and all electronic surveillance engaged in in connection with the investigation of the defendant herein, and of any other person and/or any and all potential witnesses herein involved; including but not limited to any and all forms of electronic surveillance, whether by interception of telephonic communications or otherwise.

2) An order directing that the United States Attorney for the Western District of New York, disclose to the defendant

Notice of Motion.

Robert S. Sciolino whether it is claimed that the defendant made any statements or admissions intended to be used upon the trial herein, as evidence against him, and the text of same, if any.

3) An order directing the suppression of any and all such transcriptions of electronic surveillance, and confessions or admissions made by the defendant on the ground that they were taken and made in violation of the defendant's constitutional rights, and in violation of other relevant provisions of law.

4) An order directing the United States Attorney to forthwith turn over to or otherwise make available to counsel for the defendant, any and all exculpatory material, property or testimony, under the rule of *Brady v. Maryland*.

5) An order directing the Government to forthwith serve upon counsel for the defendant a bill of particulars, setting forth the following:

a) The exact date, time, place and circumstances under which it is claimed under Count I that the defendant "did forcibly assault, resist, oppose, impede, intimidate and interfere with Thomas S. Shea, an employee of the Internal Revenue Service".

b) The exact date, time, place and circumstances under which it is charged, under Count II that the defendant "did unlawfully by threats of force endeavor to intimidate and impede one Thomas S. Shea, an employee of the Internal Revenue Service"; also the exact nature of, and language allegedly used by the defendant in each said act of "threats of force" alleged in Count II.

c) The names and addresses of any and all persons who acted as Government agents or informers in the investigation which led to the indictment herein.

Notice of Motion.

d) The names and addresses of any and all witnesses who the Government alleges were witnesses to each and every one of the acts and occasions above set forth.

6) And granting the defendant such other and further relief herein as may be just and proper.

Dated: April 9, 1973.

CHARLES J. McDONOUGH,
Attorney for Defendant,
930 Walbridge Building,
Buffalo, N.Y. 14202.

To:

John T. Elfvin, Esq.,
United States Attorney,
United States Court House,
Buffalo, N. Y. 14202

Affidavit of Robert S. Sciolino.

UNITED STATES DISTRICT COURT
Western District of New York

UNITED STATES OF AMERICA,

vs.

ROBERT S. SCIOLINO,

Defendant.

CR. 1973-137.

State of New York, }
County of Erie, } ss.:
City of Buffalo. }

ROBERT S. SCIOLINO, being duly sworn, deposes and says that he resides at No. 9140 Hillview Drive, Clarence, N.Y. Deponent is the President of Main Chrysler Plymouth, Inc. an automobile agency at No. 2649 Bailey Avenue, Buffalo, N.Y.

This affidavit is submitted in support of the defendant's various motions for relief, as set forth in the annexed notice of motion.

The indictment contains two counts. The First count charges that the defendant between July 15, 1972 and September 1, 1972, "did forcibly assault, resist, oppose, impede, intimidate and interfere with Thomas S. Shea, an employee of the Internal Revenue Service—who was then and there—auditing the books and records of Main Chrysler Ply-

Affidavit of Robert S. Sciolino.

mouth Corporation, all in violation of Title 18 United States Code, Section 111."

The second count charges that, also between July 15, 1972 and September 1, 1972, the defendant "did unlawfully by threats of force endeavor to intimidate and impede" Internal Revenue Agent Shea in connection with the said audit, in violation of Title 26 United States Code, Section 7212.

I was arraigned on April 2, 1973 and entered a plea of not guilty. No preliminary hearing was had herein.

As alleged in the indictment, Agent Shea did conduct an audit of the books and records of Main Chrysler Plymouth Corporation, during the period of time alleged in the indictment. On information and belief, Agent Shea claims that certain admissions were made to him during the course of said investigation, which the Government intends to use against me on trial of the indictment.

On information and belief, a wire tap was put on both my business telephone and my home telephone during the course of this investigation, without my consent and, as I am informed by my attorney, in violation of my constitutional rights.

I am further advised by my attorney that we cannot properly or adequately prepare this case for trial, without amplification of the vague and general charges contained in both counts I and II of the indictment.

Deponent is advised by his attorney that unless the Government is compelled to furnish a bill of particulars, stating the additional information requested in the annexed notice of motion, it will be impossible to properly or adequately prepare for trial or to proceed with the trial of this indictment.

On information and belief, the Government also has in its possession transcripts of electronic surveillances, statements

Affidavit of Robert S. Sciolino.

of witnesses, and grand jury testimony, which is exculpatory in nature, and which, deponent is advised by his attorney, should be turned over to the defendant under the rule of *Brady v. Maryland*.

Deponent has also been advised by his attorney that in order to properly prepare for the trial herein, it will be necessary to compel the Government to disclose the names and addresses of any and all informers or Government agents who took part in the investigation of this case, as well as the names and addresses of any alleged witnesses to the various transactions between the defendant and Agent Shea, which form the basis of this indictment. Deponent is presently unaware of any such witnesses.

Deponent is advised by his attorney that the defendant has the right to interview any such witnesses and to elicit from them such information as they can give with respect to the facts and circumstances surrounding the alleged crimes set forth in the indictment.

No previous application has been made for the relief sought herein.

Deponent therefore prays that an order enter herein, granting the defendant the relief sought in the notice of motion herein, and for such other and further relief herein as may be just and proper.

s/ ROBERT S. SCIOLINO.

Sworn to before me this 9th
day of April 1973

Charles J. McDonough
Notary Public, State of New York
Qualified in Erie County
My Commission expires Mar. 30, 1974.

Bill of Particulars.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

THE UNITED STATES OF AMERICA,

v.

ROBERT S. SCIOLINO.

Cr. No. 1973-137

This Bill of Particulars is submitted at the direction and order of the United States District Court for the Western District of New York.

In the prosecution of this matter, outside of necessary and proper preliminary testimony, the Government will rely on the testimony of Thomas S. Shea, Internal Revenue Agent, and in particular will rely on Shea's testimony as to the following conversations which took place between Shea and Robert S. Sciolino as indicated below:

1. A conversation of 1 August 1972 wherein Robert Sciolino discusses a former salesman, one FNU Sparcino, who had been involved in counterfeiting. Sciolino said he could kill him.

2. A conversation between Shea and Sciolino of 7 August 1972—following Sciolino's taking Shea's picture—wherein Sciolino told Shea he wanted the picture for posterity.

Bill of Particulars.

3. A conversation between Shea and Sciolino of 8 August 1972 wherein,—Sciolino having placed a gun box on his desk,—Sciolino stated that if pushed too far he did not know what he might do, etc.

4. A conversation between Shea and Sciolino of 23 August 1972 wherein Sciolino told Shea he was investigating Shea.

The Government will rely on the complete text of these conversations as set forth in Shea's detailed notes which were earlier made available to the Court and to Mr. McDonough, counsel for Sciolino.

Respectfully submitted,

DENNIS P. O'KEEFE,
Department of Justice Attorney.

cc: Charles J. McDonough, Esq.,
930 Walbridge Bldg.,
Buffalo, New York,
Clerk of the Court.

Amended Bill of Particulars.

In the
UNITED STATES DISTRICT COURT
For the Western District of New York

THE UNITED STATES OF AMERICA,

vs.

ROBERT S. SCIOLINO.

Cr. No. 1973-137

In addition to that evidence set forth in the Government's Bill of Particulars of 31 July 1973, at trial, the Government will rely on the following additional testimony and evidence:

1. Revenue Agent Thomas Shea, in addition to his testimony as detailed in the Government's Bill of Particulars of 31 July 1973, will testify that, in his professional opinion, he did in fact determine tax deficiencies with regard to Robert and Mrs. Mertice Sciolino and Main Chrysler-Plymouth for the tax years 1970-71 as follows:

DEFICIENCIES

<i>Year</i>	<i>Robert and Mrs. Mertice Sciolino</i>	<i>Main Chrysler-Plymouth</i>
1970	1,856.43	398.95
1971	\$32,854.42	\$8,025.29

2. Sheldon Brown, Permit Director, County of Erie, State of New York will testify and introduce documentary evidence of the following:

Amended Bill of Particulars.

(a) On or about 16 December 1969, defendant Robert S. Sciolino was issued a license, No. CO4087C, to carry a revolver or pistol concealed on his person by The Honorable Ernest Colucci. The license covered one S and W 38 caliber pistol No. J90766.

(b) On 9 August 1971, the license was amended to include the carrying on his person of one S and W 9mm pistol No. A143174.

(c) On 17 November 1972, the license was amended to include the carrying on his person of one Colt 25 No. ODO5190.

(d) On 29 December 1972, the license was amended to include the carrying on his person of one Beretta, caliber .380, No. F56812.

Respectfully submitted,

JOHN T. ELFVIN,
United States Attorney
Western District of New York.

BY: DENNIS P. O'KEEFE,
Department of Justice Attorney.

Dated: April 11, 1974
At: Buffalo, New York

Judgment and Commitment.

UNITED STATES DISTRICT COURT
For the Western District of New York

UNITED STATES OF AMERICA,

v.

ROBERT S. SCIOLINO.

Indictment No. Cr-1973-137

On this 30th day of May, 1974 came the attorney for the government and the defendant appeared in person and with counsel.

It is Adjudged that the defendant upon a verdict of guilty on May 2, 1974, has been convicted of the offense of did unlawfully by threats of force, endeavor to intimidate and impede an employee of the Internal Revenue Service, who was during this period engaged in and on account of the performance of his official duties, in violation of Title 26, U. S. Code, Sect. on 7212, as charged in Count Two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby sentenced as follows:

Judgment and Commitment.

Defendant is sentenced on Count Two, to One (1) Year and fined \$3,000.00, pursuant to Section 3651 of Title 18, U.S.C., with provision that defendant be confined in a jail-type institution for a period of Three (3) Months, as provided in the aforesaid section. Defendant is to stand committed until the \$3,000.00 fine is paid. Execution of the remainder of the prison sentence is suspended, and defendant is placed on probation for a period of Nine (9) Months, to commence upon expiration of confinement, subject to the standing probation order of this court and the special condition that Defendant surrender to the Probation Office of this Court all of the firearms, which he now owns or possesses, together with his permit to possess or carry firearms; and Defendant shall not carry or possess other firearms or apply for a permit during the probation period.

Defendant was found Not Guilty on Count One.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LLOYD F. MacMAHON,
United States District Judge.

JOHN K. ADAMS,
Clerk.

Approved: John T. Elfvin, U. S. Attorney,
By: Robert C. Stewart, Special Attorney,
Dept. of Justice Strike Force.

Notice of Appeal.

UNITED STATES DISTRICT COURT
Western District of New York

UNITED STATES OF AMERICA,

Respondent,

vs.

ROBERT S. SCIOLINO,

Defendant-Appellant.

Cr. 1973-137

Name and Address of Appellant: Robert S. Sciolino, 9140 Hillview Drive, Clarence, New York.

Name and Address of Appellant's Attorney: Charles J. McDonough, 930 Walbridge Building, Buffalo, New York 14202.

Offense: Violation of Title 26, U. S. Code., Sec. 7212 (a), Misdemeanor.

Concise statement of judgment or order, giving date, and any sentence: 5/30/74—one year imprisonment (9 months suspended) and \$3,000 fine.

Name of institution where now confined, if not on bail: None.

The above named appellant, Robert S. Sciolino hereby appeals to the United States Court of Appeals for the Second Circuit, from the above stated judgment.

Dated: May 30, 1974.

CHARLES J. McDONOUGH,
Attorney for Robert S. Sciolino,
Defendant-Appellant,
Office and P. O. Address,
930 Walbridge Building,
Buffalo, N. Y. 14202.

Transcript of Proceedings, April 29, 1974.

VOLUME I

1

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA

5 vs

Cr. 1973-137

6 ROBERT S. SCIOLINO,

7 Defendant.
8 -----

9 Trial of the above entitled action held before the
10 HON. LLOYD F. MacMAHON, United States District Judge,
11 and a Jury, commencing on April 29, 1974, at Buffalo,
12 New York.

13 APPEARANCES:

14 JOHN T. ELFVIN, ESQ.,
15 United States Attorney, by
16 ROBERT C. STEWART, ESQ., and
DENNIS P. O'KEEFE, ESQ.,
Department of Justice,
Appearing on behalf of the Government.

17 CHARLES J. McDONOUGH, ESQ.,
18 Appearing on behalf of the Defendant.
19
20
21
22
23
24
25

Transcript of Proceedings, April 29, 1974.

4

1 PROCEEDINGS OF APRIL 29, 1974, COMMENCING AT 4:15 P.M.

2 (Defendant present, counsel present,
3 jury panel present.)

4 THE COURT: Would counsel come up, please?

5 (Thereupon off the record discussion en-
6 sued at the bench.)

7 CLERK: Criminal Case 1973-137, United States ver-
8 sus Robert S. Sciolino.

9 MR. McDONOUGH: The defendant is ready, your Honor.

10 THE COURT: Is the Government ready?

11 MR. STEWART: The Government is ready for trial.

12 THE COURT: All right.

13 (Thereupon the selection of a jury com-
14 menced.)

15 CLERK: Your Honor, we have exhausted our supply
16 of jurors. We have some coming in in the
17 morning at ten.

18 THE COURT: You are excused until eleven o'clock to-
19 morrow morning. Do not talk about the
20 case, do not talk about it with anybody.
21 Maybe we will have enough jurors in the
22 morning.

23 (Thereupon the Court was in recess at
24 4:40 p.m.)

25

1 PROCEEDINGS OF APRIL 30, 1974, COMMENCING AT 11:00 A.M.

2 (Defendant present, counsel present,
3 jury panel present.)

4 (Thereupon a jury was duly impaneled and
5 sworn.)

6 (Thereupon two alternate jurors were duly
7 impaneled and sworn.)

8 (Thereupon the Court was in recess at
9 11:20 a.m.)

Opening Statement by Mr. O'Keefe.

1 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT
2 11:30 A.M.

3 (Defendant present, counsel present,
4 jury present.)

5 MR. McDONOUGH: Your Honor, before opening might I ask
6 that all Government witnesses be excluded
7 from the courtroom until they testify?

8 THE COURT: Yes. All witnesses, whether Government
9 or defense, may go to the witness room.

10 MR. STEWART: Your Honor, for the record, the Government
11 is satisfied that its witnesses are out of
12 the courtroom.

13 MR. O'KEEFE: May it please the Court, counsel for
14 the defense, Mr. McDonough, Mr. Stewart
15 and ladies and gentlemen of the jury:

16 It is customary at this time before we
17 formally get into the case to make an open-
18 ing statement and to attempt to explain
19 to you briefly what the charges are and
20 what the Government expects to prove as to
21 those charges. Now, the charge in this
22 case is in the form of an indictment, and,
23 as the Judge already told you, that is no
24 evidence of guilt, it is merely the way
25 that the Government has of letting a person

Opening Statement by Mr. O'Keefe.

1 know what they are charged with.

2 Now, in this particular case the indict-
3 ment is very short, and I am going to read
4 it to you. It is a two count indictment.
5 The first count charges:

6 "That from on or about the 15th of
7 July, 1972, up to and including 1 September,
8 1972, in the Western District of New York,
9 the defendant, Robert S. Sciolino, unlaw-
10 fully did forcibly assault, resist, oppose,
11 impede, intimidate and interfere with
12 Thomas S. Shea, an employee of the Internal
13 Revenue Service, and a person designated
14 in Title 18, United States Code, Section
15 1114, who was then and there engaged in
16 and on account of the performance of his,
17 Shea's, official duties, to wit, auditing
18 the books and records of the Main Chrysler-
19 Plymouth Corporation. All in violation
20 of Title 18, United States Code, Section
21 111."

22 The second count is similar, only it
23 is a violation of another law:

24 "From on or about 15 July, 1972, up
25 to and including 1 September, 1972, in

Opening Statement by Mr. O'Keefe.

1 the Western District of New York, the de-
2 fendant, Robert S. Sciolino, did unlawfully
3 by threat of force endeavor to intimidate
4 and impede one Thomas S. Shea, an employee
5 of the Internal Revenue Service, who was
6 during this period engaged in and on account
7 of the performance of his, Shea's, official
8 duties, to wit, auditing the books and re-
9 cords of the Main Chrysler-Plymouth Cor-
10 poration. All in violation of Title 26,
11 United States Code, Section 7212."

12 Now, each of these two charges contain
13 certain elements or parts which the Govern-
14 ment must prove beyond a reasonable doubt.
15 Now, in the first charge, the Government
16 will show, first of all, that Mr. Sciolino
17 knew that Mr. Shea was an employee of the
18 Internal Revenue Service. Secondly, that
19 he forcibly assaulted and intimidated,
20 impeded, opposed Mr. Shea; and, thirdly,
21 we will show that Mr. Shea was acting in
22 his official capacity. Now, the second
23 count is similar to that, only here the
24 Government only need prove that threats
25 of force, rather than force itself, were

Opening Statement by Mr. O'Keefe.

1 used.

2 Now, these words that are used in the
3 indictment, forcible assault, intimidation,
4 opposition, impeding, these are words of
5 art, which the Court will explain the
6 meaning of to you, and you will follow the
7 Court's explanation as to what these words
8 mean.

9 This will be a short trial. The
10 Government will offer only two witnesses.
11 The first witness will be the IRS auditor,
12 Thomas Shea. Mr. Shea will testify that
13 from 15 July, 1972 through 1 September,
14 1972 he was assigned to audit the books
15 and records of a Buffalo corporation,
16 the Main Chrysler-Plymouth Corporation,
17 doing business at 2649 Bailey Avenue,
18 Buffalo, and this audit was being conducted
19 to determine whether or not the corporation
20 was paying its proper amount of tax. In
21 the course of his audit Mr. Shea had a
22 number of meetings with Mr. Robert Sciolino,
23 who was at that time the president of
24 Main Chrysler-Plymouth, and he had conver-
25 sations with other officers and employees

Opening Statement by Mr. O'Keefe.

1 of the corporation. Mr. Shea will testify
2 that on one occasion Mr. Sciolino took
3 his, Shea's, picture without Shea's per-
4 mission, and he made several remarks that
5 tended to make Agent Shea apprehensive.
6 He will also testify that the next day
7 Mr. Sciolino called him into his office
8 and he placed a gun box on his desk, and
9 on the end of this box was marked S & W,
10 .38 caliber, Chiefs Special. With this
11 gun box on the desk he made certain pointed
12 remarks to Agent Shea, which once again
13 made Shea intimidated and fearful. Shea's
14 testimony will also disclose other conver-
15 sations which, viewed in their totality,
16 will show that Mr. Sciolino meant to and
17 did in fact intimidate Agent Shea. The
18 Government's second witness will introduce
19 records of the Erie County Pistol Permit
20 License Bureau, which will show that dur-
21 ing this period Robert S. Sciolino was
22 indeed licensed to carry a concealed weapon.

23 Ladies and gentlemen, I submit to you
24 that once you have heard the Government's
25 evidence, and once you have heard the

Opening Statement by Mr. McDonough.

1 Court's charge, that you will find that
2 indeed Mr. Sciolino committed the crimes
3 with which he is charged.

4 MR. McDONOUGH: If your Honor please, based on the
5 Government's opening, I move to dismiss
6 both counts of the indictment, particularly
7 the first count of the indictment, which
8 under all the cases with which your Honor
9 is familiar compel a forcible assault or
10 a forcible intimidation. There has not
11 been one word stated by the United States
12 attorney in his opening indicating any
13 use of any force.

14 THE COURT: Denied.

15 MR. McDONOUGH: May it please the Court, counsel for
16 the Government, ladies and gentlemen of
17 the jury:

18 As Mr. O'Keefe, the Assistant United
19 States Attorney has informed you, it is
20 the duty of the United States attorney
21 in any criminal case to open his case,
22 that is, to present before you at least
23 a skeleton of the facts on which he hopes
24 to obtain a conviction of the defendant.

25 In this case my client is charged with

Opening Statement by Mr. McDonough.

12

1 two serious crimes. First, that he forcibly
2 bly assaulted and intimidated Mr. Shea in
3 the performance of his audit of the books
4 and records of the Main Chrysler-Plymouth
5 Company out at 2649 Bailey Avenue. Second,
6 that by threats of force -- those are the
7 words of the statute -- he intimidated,
8 impeded and impaired Mr. Shea in the per-
9 formance of his duties as an Internal Revenue
10 auditor.

11 The defendant by his plea of not guilty
12 denies these charges. He denies that he
13 ever either forcibly assaulted or intimi-
14 dated Mr. Shea. He denies that any con-
15 duct of his was ever meant to be a threat
16 of force against Mr. Shea in the conduct
17 of this audit.

18 You are brought from your various
19 walks of life here, citizens of this com-
20 munity, to sit in impartial judgment. You
21 are the conscience of the community, you
22 are part of the machinery of this court,
23 and eventually it is going to be up to
24 you to determine first, with respect to
25 the first count, whether Mr. Sciolino ever

Opening Statement by Mr. McDonough.

13

1 used a single bit of force against Mr. Shea.
2 All I ask you to do in that respect is to
3 keep your minds open, as you promised the
4 Court you would, because after all, as the
5 Court told you this morning, this indict-
6 ment is an accusation only, it carries no
7 proof, it has no value as evidence. It is
8 denied by the defendant. It is part of
9 the legal machinery of our system of govern-
10 ment by which a defendant is notified of
11 the type of crime with which he is charged,
12 the date and circumstances, and is compelled
13 to come into court and stand trial, which
14 is exactly what we are doing.

15 It is you, and you only, that will de-
16 termine his guilt or innocence. I would
17 like to remind you again, as the Court also
18 informed you, this defendant, as every
19 other citizen of the United States who is
20 charged with a crime, is cloaked with the
21 very important cloak or presumption of
22 innocence, which means, as the Court has
23 told you, that this defendant as he sits
24 here in this courtroom throughout this
25 trial, however short or long it may be,

Opening Statement by Mr. McDonough.

14

1 is an innocent man. It will be your duty
2 as you sit here to continue to look upon
3 him as an innocent man throughout the
4 trial, after you have heard all the evi-
5 dence on both sides, after you have heard
6 the Judge's charge as to the law governing
7 the case, then and then only will you be
8 called upon as a jury to determine the
9 question of guilt or innocence.

10 I think in view of the importance of
11 this case, the seriousness of the charges
12 against my client, you are entitled to know
13 a little of the background of what the evi-
14 dence will show about his background. You
15 will find out that he is a young man, 36
16 years old, resides with his wife and three
17 children out in the Village of Clarence,
18 and after he attended high school and, I
19 think, college to some degree, he served
20 time in the army and got out into the auto-
21 mobile business as a salesman for a few
22 years, and finally about 1970 he was able
23 to purchase this Main Chrysler-Plymouth
24 agency, which actually is out at 2649
25 Bailey Avenue in the City of Buffalo.

Opening Statement by Mr. McDonough.

1 We have pictures here which we will show
2 you to show you the extent of this opera-
3 tion and the nature of the business which
4 this man runs. We will have pictures of
5 his office which will show you where one
6 of the key episodes in what the Government
7 claims were these threats of force took
8 place, the episode of the gun box, and we
9 will show you that this was an agency
10 which had been set up by the Chrysler Cor-
11 poration some years before, I think about
12 1965. Mr. Sciolino had worked as a car
13 salesman at various agencies, Chrysler and
14 Dodge agencies here in Buffalo, and with
15 the help of his father-in-law and some
16 savings of his own and loans, he was able
17 to buy into this agency. He worked hard
18 at it, he made good.

19 This audit took place in 1972, about
20 two years after Mr. Sciolino had bought
21 this agency. Up until some time before
22 that Chrysler had owned the majority of
23 the stock, as you will see, but gradually,
24 under his agreement with them, he was al-
25 lowed to buy the stock as he progressed in

Opening Statement by Mr. McDonough.

1 the business and operated the business,
2 and over a period of about two years he
3 as able to do just that.

4 We will show you that Shea came out
5 there sometime in July to make an audit of
6 the corporation books. We will show you
7 that Mr. Shea -- that this corporate audit
8 business was new to Mr. Sciolino. We will
9 show you that he asked Mr. Shea a number
10 of questions, discussed a number of things
11 with him during the course of this audit.
12 You will find that the secretary and comp-
13 troller of the company, Mr. Thomas Testa,
14 was actually a Chrysler man put in there
15 as an official of the company, not only to
16 help Mr. Sciolino, but also, of course, to
17 protect the interests of the Chrysler Cor-
18 poration in this fairly large and busy
19 automobile agency.

20 I needn't tell you, of course, that
21 Mr. Sciolino's company did business with
22 all kinds of people, whoever had the money
23 or the credit and wanted to buy an auto-
24 mobile, wanted to buy a Chrysler or a Ply-
25 mouth automobile, of course, was welcome

Opening Statement by Mr. McDonough.

17

1 in the showroom.

2 You may hear evidence during the trial
3 as to the type of investigation Mr. Shea
4 was conducting. He was there for almost
5 two months. The overall period of his
6 audit took from sometime in the latter
7 part of July well into September. I think
8 we will show that his last visit to the
9 agency was about September 25, 1972, just
10 about two months or a little over after he
11 had started his audit. We will show that
12 Mr. Sciolino and his agency was very
13 courteous and helpful to Mr. Shea. They
14 have several salesmen's offices, and they
15 took a salesman out of one office and made
16 this office available to Mr. Shea. During
17 the time of his audit they cooperated with
18 him in every way possible.

19 You will find, ladies and gentlemen,
20 that there was one particular contract
21 between Mr. Sciolino and Chrysler that Mr.
22 Sciolino refused to give him without a
23 summons, for reasons which will be developed
24 as we go on. It is not my purpose to go
25 into the details of the testimony at this

Opening Statement by Mr. McDonough.

1 time.

2 You will hear about this picture taking
3 episode, ladies and gentlemen, and just
4 see what you think about it as a threat,
5 according to the Government, after you have
6 heard what actually took place on that day.
7 Listen carefully and attentively with an
8 open mind to the testimony as to the alleged
9 placing of the gun box by Mr. Sciolino on
10 another day, I think it was maybe the very
11 next day after the picture taking episode,
12 and the exact circumstances and the reason
13 for which this gun box appeared out of
14 Mr. Sciolino's desk and was placed on the
15 desk. As matter of fact, you will know
16 before this trial is over that the gun box
17 was empty, there was no gun in that gun box,
18 and that it wasn't taken out for the
19 purpose of intimidating Mr. Shea in the
20 slightest in his audit. You will hear the
21 real reason how that gun box happened to
22 come out of the desk.

23 That's about all I have to say at this
24 time, ladies and gentlemen, except to ask
25 you as fair and impartial jurors, who were

Opening Statement by Mr. McDonough.

19

1 brought here from your various walks of
2 life for just that purpose, to keep your
3 minds open, to keep your ears open, and
4 to remember -- I am sure none of you feel
5 that the word of an Internal Revenue agent
6 is entitled to any greater weight merely
7 because he wears a badge or that he has
8 credentials. I hope in the interest of
9 justice you are going to weigh his testi-
10 mony in the same scale and measure it with
11 the same yardstick, if you will, that you
12 would apply to any citizen of this commu-
13 nity who gets on that witness stand and
14 puts his hand on the Holy Bible and swears
15 to tell the truth, the whole truth, and
16 nothing but the truth.

17 Reserve your decision, ladies and
18 gentlemen. Wait until you have heard all
19 of the evidence in this case, and then the
20 time will come when you, as citizens of
21 this community, will be called upon not
22 merely to rubber-stamp a Government prose-
23 cution, but to do justice, as you find it,
24 and based on the evidence in the case.
25 Thank you.

1 THE COURT: We will take a short recess. The Court
2 has another jury which I have to see for
3 a few moments. You may retire to the jury
4 room.

5 (Thereupon the jury exited the courtroom
6 at 11:50 a.m.)

7 THE COURT: Do either of you have any requests to
8 charge?

9 MR. STEWART: Your Honor, I previously served requests
10 to charge on your Honor.

11 THE COURT: I don't see them. I don't know where they
12 are.

13 MR. STEWART: It was in the original group of documents.

14 THE COURT: I will dig through the file. I have them,
15 good.

16 (Thereupon the Court was in recess at
17 11:50 a.m.)

18 (Proceedings resumed, pursuant to recess,
19 commencing at 12:00 noon.)

20 (Defendant present, counsel present, jury
21 present.)

22 MR. STEWART: The Government would call Thomas Shea,
23 please.

24

25

T. S. Shea, for Government, Direct.

1 T H O M A S S. S H E A, called as a witness on behalf
2 of the Government, and being first duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION BY MR. STEWART:

5 Q. Mr. Shea, where are you employed?

6 A. I'm employed by the United States Government.

7 Q. All right, sir. What branch of the United States
8 Government?

9 A. Internal Revenue Service.

10 Q. Is that part of the Treasury Department?

11 A. Yes, sir, it is.

12 Q. How long have you been employed by the Internal Revenue
13 Service?

14 A. Twenty-four years.

15 Q. And of that twenty-four years -- what is your specific
16 assignment at the present time?

17 A. I'm an Internal Revenue agent.

18 Q. To which division are you assigned?

19 A. Field Audit Division.

20 Q. How long have you been assigned to Field Audit
21 Division?

22 A. Eighteen years.

23 Q. Do you carry a gun and have a badge and have arrest
24 powers?

25 A. No.

T. S. Shea, for Government, Direct.

1 Q. Are there agents of the Internal Revenue Service who
2 do carry weapons and have arrest powers?

3 A. Yes.

4 MR. McDONOUGH: If it please the Court, that is objected to,
5 immaterial.

6 THE COURT: Overruled.

7 BY MR. STEWART:

8 Q. And what are they called?

9 A. Special agents.

10 Q. You are a Revenue Agent?

11 A. I am a Revenue Agent.

12 Q. Now, in the course of your eighteen years with the
13 Audit Branch, have you had occasion to conduct audits
14 on corporations?

15 A. Yes, sir, I have.

16 Q. And is it the responsibility of revenue agents to en-
17 force the so-called Internal Revenue Code?

18 A. Yes, it is, sir.

19 Q. Now, can you give us any idea of approximately how many
20 such audits, that is, corporate audits, you conduct on
21 the average in a year?

22 A. Oh, it probably would be ten to twenty audits a year,
23 and as the degree of difficulty, or with the larger
24 corporations, it could be a lesser amount.

25 Q. Now, I direct your attention to early July of 1972, at

T. S. Shea, for Government, Direct.

1 that time did you receive a particular assignment from
2 your supervisor?

3 A. Yes, I did.

4 Q. What was your supervisor's name?

5 A. Richard Olsen.

6 Q. And what was the assignment?

7 A. He assigned the Main Chrysler-Plymouth corporate tax
8 return for examination.

9 Q. By examination, is that what is commonly called an audit?

10 A. Yes.

11 Q. Now, preparatory to beginning the audit on Main Chrysler,
12 did you receive any background information for purposes
13 of conducting that audit?

14 A. Yes, I did.

15 Q. From whom did you receive that evidence?

16 A. Revenue Agent Clohessey.

17 Q. All right, sir. Now, directing your attention to
18 July 20, 1972, which was a Thursday, did you have
19 occasion on that particular day to arrange for an
20 appointment to meet the owner of Main Chrysler?

21 A. Yes, I did.

22 Q. And pursuant to that particular conversation did you
23 on Monday, on or about Monday, July 24, 1972, go to
24 the premises of Main Chrysler-Plymouth, 2649 Bailey
25 Avenue?

1 A. Yes.

2 Q. Would you tell us who, if anyone, you met at the pre-
3 mises?

4 A. I met Mr. Testa.

5 Q. All right, sir. What was his position?

6 A. I believe he was the secretary-treasurer of the cor-
7 poration.

8 Q. Now, did you explain to him the purpose of your being
9 present at the corporation?

10 A. Yes, I did.

11 Q. Did you subsequently meet anyone else or did Mr. Testa
12 introduce you to any of the other officers of the cor-
13 poration?

14 A. Yes, sir.

15 Q. And would you tell us, please, who it was you met?

16 A. Mr. Robert Sciolino.

17 Q. All right, sir. What was Mr. Robert Sciolino's posi-
18 tion?

19 A. He was president of the corporation.

20 Q. Now, the individual that you met that July day, who
21 introduced himself as Robert Sciolino and as the presi-
22 dent of Main Chrysler, do you see that individual in
23 the courtroom today?

24 A. Yes, I do.

25 Q. Would you point him out, please?

T. S. Shea, for Government, Direct.

25

1 A. (Indicating.)

2 Q. All right.

3 THE COURT: Could you describe which one?

4 THE WITNESS: Mr. Sciolino is the gentleman seated at
5 the table with the dark glasses.

6 THE COURT: Let the record reflect that he has identi-
7 fied the defendant.

8 BY MR. STEWART:

9 Q. Now, after meeting Mr. Sciolino on July 24, 1972, did
10 you immediately begin to conduct the audit of the books
11 and records at Main Chrysler?

12 A. Yes, I did.

13 Q. That is a corporation, is it not?

14 A. Yes.

15 Q. It was at that time?

16 A. Yes, sir.

17 Q. Now, I direct your attention to Tuesday, August 1, 1972,
18 did you have occasion on that particular day to speak
19 to Robert Sciolino at the office of Main Chrysler-Ply-
20 mouth?

21 A. Yes.

22 Q. And did you make at that time a specific request of
23 Mr. Sciolino?

24 A. Yes.

25 Q. And what was that request?

1 A. I requested a Chrysler Corporation agreement and I re-
2 requested copies of the individual tax returns of the
3 corporate officers.

4 Q. Why was it necessary -- was it necessary to have the
5 tax returns of the corporate officers?

6 A. Yes.

7 Q. Why was it?

8 A. Normally -- not normally, but as a standard, whenever
9 we do examine a corporation, we are also required to
10 examine the returns of the corporate officers and key
11 employees.

12 Q. Was that for a first year corporation?

13 A. This is a standard procedure.

14 Q. All right. Now, did you also at that time have a con-
15 versation with Mr. Robert Sciolino concerning two of
16 the employees that were on the payroll?

17 A. Yes, sir.

18 Q. Now, as a result of the request for the records of
19 the officers, the income tax returns of the officers,
20 and your conversation about the two employees, did
21 Mr. Sciolino make any remarks or any comments to you?

22 A. He wanted to know why I requested his individual returns.

23 Q. Did you explain that to him?

24 A. Yes, I did.

25 Q. And did he thereafter make any further comments to you

1 at that particular time?

2 A. No, sir.

3 Q. All right. Now, directing your attention to August 7,
4 1972, which was a Monday, at approximately 2:35 p.m.,
5 did you have occasion to be on the premises of Main
6 Chrysler?

7 A. Yes, sir.

8 Q. And where exactly were you at that particular time in
9 the building?

10 A. I was seated in a salesman's cubicle on the main show-
11 room floor.

12 Q. About how large is the cubicle?

13 A. It might be eight, ten feet square.

14 Q. Is that the area that you had been using to conduct
15 your audit?

16 A. Yes, sir.

17 Q. Now, would you tell the Court and jury what, if anything,
18 unusual occurred at that particular time?

19 A. As I was examining documents I was startled by a flash,
20 and I looked up and Mr. Sciolino was standing there with
21 a flash camera.

22 Q. Approximately how far was Mr. Sciolino from you at the
23 time you first saw him with the flash camera?

24 A. I would say four or five feet.

25 Q. All right, sir. Did you say anything to Mr. Sciolino?

T. S. Shea, for Government, Direct.

1 A. I said, "What was that for?"

2 Q. What, if anything, did he say to you?

3 A. He said, "That's for posterity, so I can show it around
4 and say this is the guy."

5 Q. Now, what did you understand him to mean by "posterity"?

6 MR. McDONOUGH: I object to what he understood him to mean.

7 THE COURT: Overruled.

8 BY MR. STEWART:

9 Q. You may answer.

10 A. Future generations.

11 Q. All right. What did you understand him to mean by so
12 he can show it around and say this is the guy?

13 MR. McDONOUGH: I object to it again. The remark speaks
14 for itself.

15 THE COURT: Overruled.

16 BY MR. STEWART:

17 Q. You may answer.

18 A. In view of the background information --

19 MR. McDONOUGH: This was what I objected to.

20 THE COURT: Sustained.

21 MR. McDONOUGH: I move to strike it and ask the Court to
22 instruct the jury to disregard that remark.

23 THE COURT: Disregard it.

24 MR. STEWART: May I make a proffer to the Court?

25 THE COURT: Reframe your question, bring your evidence

T. S. Shea, for Government, Direct.

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1 out.

2 BY MR. STEWART:

3 Q. All right, sir. Did you --

4 THE COURT: There is a pending question, do you with-
5 draw it?

6 MR. STEWART: I thought the Court sustained the objec-
7 tion.

8 THE COURT: No, I overruled the objection to the ques-
9 tion.

10 BY MR. STEWART:

11 Q. All right, you may answer.

12 THE COURT: His answer was not responsive, I struck
13 the answer.

14 THE WITNESS: I'm sorry, would you please repeat the
15 question?

16 BY MR. STEWART:

17 Q. All right, sir. I asked you what you understood him to
18 mean by the words so he can show it around and say this
19 is the guy.

20 MR. McDONOUGH: I object to that.

21 THE COURT: Overruled.

22 THE WITNESS: That this picture might be circulated to --
23 among other people.

24 BY MR. STEWART:

25 Q. All right, sir. Did you have at that particular time

1 in your mind any particular group of people who you
2 thought it might be circulated among?

3 MR. McDONOUGH: Objection.

4 THE COURT: Sustained.

5 MR. STEWART: May I now make the proffer at the bench?

6 THE COURT: I don't think a proffer is necessary. I
7 understand what you intend, but you are not
8 going about it as you must.

9 BY MR. STEWART:

10 Q. All right, sir. Now, you say that you felt he would
11 circulate it among certain people?

12 A. Yes, sir.

13 MR. McDONOUGH: Wait a minute, that isn't what he said.

14 THE COURT: I don't recall that he said that, sustained.
15 Strike it out. Strike the question. Coun-
16 sel's questions are not evidence, ladies
17 and gentlemen.

18 (Thereupon the reporter read as follows:
19 "A. That this picture might be circulated
20 to -- among other people.")

21 BY MR. STEWART:

22 Q. And what, if any, reaction did you have to that particu-
23 lar comment?

24 MR. McDONOUGH: I object to the form of the question.

25 THE COURT: Sustained.

1 BY MR. STEWART:

2 Q. What was in your mind as a result of what he said to you?

3 MR. McDONOUGH: I object to it.

4 THE COURT: Sustained.

5 BY MR. STEWART:

6 Q. All right, sir. You testified before that you had re-
7 ceived certain background information from Mr. Clohessey,
8 did you have that background information in your mind
9 at the moment of this incident with the flash camera?

10 MR. McDONOUGH: I object to it.

11 THE COURT: Sustained.

12 MR. STEWART: Apparently your Honor is --

13 THE COURT: Proceed, don't "Apparently your Honor," ask
14 your questions.

15 MR. STEWART: May I approach the bench for a moment?

16 THE COURT: No, ask a question.

17 BY MR. STEWART:

18 Q. Did you say anything further to Mr. Sciolino at that
19 particular time?

20 A. I told him that he took my picture without my consent
21 or permission, and that I felt he violated my personal
22 rights.

23 Q. All right, sir. What, if anything, did he say to you?

24 A. "This is my place, I can do anything I wish."

25 Q. Did he at that time offer to return the picture?

T. S. Shea, for Government, Direct.

1 A. No, sir.

2 Q. Now, did you subsequently have another conversation
3 with Mr. Sciolino later that afternoon at approximately
4 3:55 p.m.?

5 A. Yes, sir.

6 Q. And would you tell us, please, the substance of that
7 conversation, to the best of your memory?

8 A. He approached me and stated that he was on medication
9 for a stomach disorder and the medication was responsible
10 for his behavior.

11 Q. All right, sir. What, if anything, did you say to him
12 at that time?

13 A. I again reiterated that he had taken the picture with-
14 out my consent.

15 Q. And did he at that time offer to return the picture?

16 A. No, sir.

17 Q. Now, in the eighteen years that you have been auditing
18 corporations, has anyone else ever taken your picture?

19 MR. McDONOUGH: Objection.

20 THE COURT: Sustained.

21 BY MR. STEWART:

22 Q. I direct your attention to Tuesday, August 8, 1972, at
23 approximately 9:40 a.m., did you have occasion at that
24 time to be on the premises of Main Chrysler?

25 A. Yes, sir.

1 Q. Now, did you have a conversation with the defendant,
2 Mr. Robert Sciolino?

3 A. Yes.

4 MR. McDONOUGH: Would you identify the date?

5 MR. STEWART: August 8, 1972, a Tuesday morning.

6 BY MR. STEWART:

7 Q. Did you make a request at that time of Mr. Sciolino?

8 A. Yes, sir.

9 Q. Would you tell us, please, what the request was?

10 A. I again requested the Chrysler agreement and personal
11 records documentation.

12 Q. All right, sir. Would you tell us, please, what, if
13 anything, Mr. Sciolino said at that time?

14 A. Mr. Sciolino asked me to step into his office.

15 Q. And did you continue the conversation in the office?

16 A. Yes, sir.

17 Q. Where did you sit, or did you sit?

18 A. I sat across from Mr. Sciolino's desk.

19 Q. And where was he seated?

20 A. He was seated behind his desk.

21 Q. Approximately how far were you from his desk?

22 A. Oh, perhaps maybe four feet.

23 Q. And would you tell us, please, what if anything he did
24 when he sat down at the desk?

25 A. Well, when we entered the office Mr. Sciolino looked

T. S. Shea, for Government, Direct.

1 about supposedly for the Chrysler agreement, looked on
2 the file cabinet, looked on the auxiliary desk, he sat
3 down and opened the upper right-hand desk drawer and he
4 removed from the desk drawer a box, and he placed it
5 on top of the desk.

6 Q. All right, sir. Would you describe, please, this box,
7 to the best of your recollection?

8 A. As he placed the box on the desk we both glanced at it.
9 The one thing I noted was a label on the end of the box
10 and it had imprinted thereon Smith & Wesson, .38 Chief
11 Special. I removed my eyes from the box and looked at
12 Mr. Sciolino.

13 Q. How large did you say the box was?

14 A. To the best of my recollection, it might have been
15 probably six to eight inches or it may have been square,
16 I don't know, I just glanced at it.

17 Q. Now, after you lifted your eyes from the gun box -- I
18 take it, by the way, that the label at the end was point-
19 ing in your direction, is that correct?

20 A. Yes, sir.

21 Q. And you were how far from it?

22 A. Oh, maybe four feet.

23 Q. And after you lifted your eyes would you tell us what,
24 if anything, Mr. Sciolino said to you?

25 A. Mr. Sciolino went into a discourse on the development

T. S. Shea, for Government, Direct.

1 of the human mind, and he continued that man was
2 basically an uncivilized being, that they delighted in
3 sports, violence and killing, and that man was basically
4 unpredictable and one never knew what a man might do in
5 a given set of circumstances. He also stated that there
6 is no telling what he might not do if backed into a
7 corner and there was no way out.

8 Q. When he finished that what, if anything, did you --

9 A. The phone rang and that terminated the conversation.

10 Q. Did he look again at the box?

11 A. Yes --

12 MR. McDONOUGH: I object to that, if the Court please.

13 THE WITNESS: -- as he made the statement prior to the
14 ringing of the phone his eyes dropped to
15 the box.

16 BY MR. STEWART:

17 Q. Now, what did you understand him to mean by his state-
18 ment that he didn't know what he would do if he were
19 cornered and had no escape?

20 MR. McDONOUGH: I object to this, improper and incompetent.

21 THE COURT: Overruled.

22 BY MR. STEWART:

23 Q. You may answer.

24 A. I felt that this was perhaps another attempt to intimi-
25 date or to cause me from discharging my duties, and

T. S. Shea, for Government, Direct.

1 possibly even a threat, in view of the episode of the
2 previous day.

3 Q. Now, did you report this incident to your supervisor?

4 MR. McDONOUGH: That is objected to, immaterial.

5 THE COURT: I will allow it.

6 BY MR. STEWART:

7 Q. You may answer.

8 A. Yes, sir.

9 Q. And did you thereafter resume your duties on the audit?

10 A. Yes, sir.

11 Q. Now, directing your attention to Thursday, the 17th of
12 August, did you at that time have another conversation
13 during the afternoon hours with the defendant, Robert
14 Sciolino.

15 A. Yes, sir.

16 MR. McDONOUGH: The 17th?

17 MR. STEWART: The 17th, yes, sir.

18 BY MR. STEWART:

19 Q. And did you make a request of him at that particular
20 time?

21 A. Yes, sir.

22 Q. What was that request?

23 A. I again requested the Chrysler agreement.

24 Q. Directing your attention to Wednesday, August 23, 1972,
25 did you have a conversation sometime that day with the

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1 defendant, Robert Sciolino?

2 A. Yes, sir.

3 Q. And I am referring now to a conversation in the little
4 office that you were using, the little cubicle, do you
5 recall what time of day that was?

6 A. I believe it was morning, sir.

7 Q. And was Mr. William Sciolino present during that con-
8 versation?

9 A. Yes.

10 Q. Would you tell us, please, to the best of your recol-
11 lection, what was said during that particular conversa-
12 tion?

13 MR. McDONOUGH: I object to it unless Robert was also there.

14 BY MR. STEWART:

15 Q. Could you tell us who was there?

16 A. Robert Sciolino and William Sciolino.

17 Q. And how far was Robert Sciolino from you at the time
18 this conversation took place?

19 A. Standing in front of the desk.

20 Q. About how many feet is that from you?

21 A. Maybe -- well, the width of the desk, maybe three, four
22 feet.

23 Q. All right. How far was Robert Sciolino from William
24 Sciolino?

25 A. He was standing alongside.

T. S. Shea, for Government, Direct.

1 Q. All right. Now, would you tell us, please, the sub-
2 stance of that conversation, to the best of your recol-
3 lection.

4 MR. McDONOUGH: I object to anything William Sciolino said
5 as not binding on the defendant.

6 THE COURT: Overruled.

7 THE WITNESS: They advised me --

8 MR. McDONOUGH: I object to "they".

9 THE COURT: Sustained. What did you say, what did
10 anyone else say?

11 BY MR. STEWART:

12 Q. You may answer. What did they say?

13 THE COURT: Who said what, that's all.

14 BY MR. STEWART:

15 Q. Do you know -- with respect to this conversation, do
16 you know which of the two individuals said -- made the
17 particular comment that I am attempting to elicit?

18 A. They were both talking and, to the best of my recollec-
19 tion, Robert mentioned they had also been investigating
20 me, and they wanted to know why one of the top -- that
21 I was one of the top three men in my group, and why I
22 was examining them.

23 Q. All right, sir. Now, quite apart from that incident,
24 at that particular time, the time you were conducting
25 the audit on Main Chrysler, in your group can you tell

T. S. Shea, for Government, Direct.

1 us approximately how many men were of equal station
2 to you?

3 A. Three. There were three of us.

4 THE COURT: At any of these incidents did he ever
5 produce the Chrysler agreement?

6 THE WITNESS: No, sir.

7 THE COURT: What did he say about that?

8 THE WITNESS: He refused to give it to me.

9 THE COURT: What did he say?

10 THE WITNESS: For a number of reasons --

11 THE COURT: What did he say?

12 THE WITNESS: He said Chrysler didn't want him to give it,
13 he was ashamed of the agreement, that if I
14 wanted the agreement I would have to get it
15 from Chrysler, and there are a number of
16 reasons, and these are the ones that I
17 recall immediately, sir.

18 BY MR. STEWART:

19 Q. All right, sir. Directing your attention then to
20 Thursday, August 31, 1972, at that time --

21 THE COURT: Just a moment. I am sorry to intrude, but
22 did he at any time say he did not have the
23 agreement?

24 THE WITNESS: No, sir.

25 THE COURT: All right.

1 BY MR. STEWART:

2 Q. Again, on August 31, 1972, at that time were you
3 reassigned by your supervisor?

4 A. Yes.

5 Q. And was the audit completed at that time?

6 A. No, sir.

7 Q. Was the audit ever completed?

8 A. No, sir.

9 MR. STEWART: May I have just a moment, your Honor?

10 THE COURT: Yes.

11 MR. STEWART: I would again request permission to approach
12 the bench and make an offer of proof with
13 respect to one point.

14 THE COURT: I will let you make an offer of proof.

15 MR. McDONOUGH: May this be done outside the presence of
16 the jury?

17 THE COURT: Yes.

18 (Thereupon the following conference ensued
19 at the side bar:

20 MR. STEWART: Notwithstanding the fact the agent testi-
21 fied that the mere events as described did
22 in fact intimidate him, he felt threatened
23 by them, his apprehensions were consider-
24 ably heightened by the background informa-
25 tion which had been fed to him by Revenue

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1 Agent Clohessey at the time of the assign-
2 ment. It seems to me that that background
3 information is essential to show reason-
4 ableness for his state of mind. Otherwise,
5 I fear that one can say perhaps he overly
6 reacted to the situation, whereas in light
7 of this information, the comment about cir-
8 culating that picture, it seems to me takes
9 on a tremendous significance, because it
10 was these people who -- he has been a resi-
11 dent of Buffalo all his life, has known
12 and been familiar with -- read in the papers
13 --

14 THE COURT:

Background information is the vaguest thing
15 in the world. What are you talking about?
16 You keep asking about background informa-
17 tion, but you do not in any way tie it to
18 this defendant.

19 MR. STEWART:

Well, the background information from Clo-
20 hessey was that there were allegations of
21 hidden ownership by two individuals that
22 this agent knew were represented to be in
23 criminal activities, cars that were regis-
24 tered to -- or surveillances turned up
25 the fact that cars driven by other

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1 individuals connected -- represented to be
2 connected with criminal activities were
3 registered to this particular place, the
4 fact that a fellow by the name of -- an
5 employee had been arrested by the Secret
6 Service a month before with counterfeit
7 currency in the vehicle, the fact that it
8 was reported to the agent that there were
9 allegations from police sources of weekly
10 meetings in the Main Chrysler office in-
11 volving other persons who the agent --
12 who the agent recognized the names of as
13 being reputedly involved in criminal
14 activity. That is what scared this agent
15 to death. It seems to me the jury is
16 entitled to have that so that they can
17 appreciate what happened.

18 THE COURT:

I don't question that they are entitled to
19 have the benefit of it on competent evi-
20 dence, none of which you have shown me.
21 (Thereupon the conference at the side bar
22 was terminated.)

23 MR. STEWART:

May it please the Court, it is twelve
24 thirty-five, and your Honor's comment has
25 indicated to me that perhaps I can solve

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1 the problem, the dilemma that faces me.
2 Since this is a very short case, it will
3 be over today, and it is almost time for
4 the noon recess, I would request an adjourn-
5 ment, a regular luncheon adjournment, so
6 that I can have an opportunity to study
7 the situation and attempt to solve the
8 problem which I think is crucial. I do
9 not want to see what I consider to be an
10 important case go down the drain because
11 I have somehow made a mistake or missed
12 something.

13 THE COURT: Well, all right, we will take a luncheon
14 break until one-thirty.

15 MR. STEWART: Thank you very much, your Honor.

16 THE COURT: Do not talk about the case or let anybody
17 talk about it with you.

18 (Thereupon the Court was in recess at
19 12:35 p.m.)
20
21
22
23
24
25

T. S. Shea, for Government, Cross.

1 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT
2 1:35 P.M.

3 (Defendant present, counsel present, jury
4 present.)

5 T H O M A S S. S H E A, called as a witness on behalf
6 of the Government, and having been previously duly sworn,
7 resumed and testified further as follows:

8 DIRECT EXAMINATION BY MR. STEWART (Cont'd.):

9 Q. Mr. Shea, you have testified that during the incident
10 on August 8, in which you saw the gun box, that you
11 felt threatened and intimidated, would you tell us
12 why, please?

13 MR. McDONOUGH: I object to that.

14 THE COURT: Sustained.

15 MR. STEWART: The witness is with you.

16 CROSS-EXAMINATION BY MR. McDONOUGH:

17 Q. Mr. Shea, I believe you informed the Court and jury
18 this morning that you had been an Internal Revenue
19 Agent assigned to Field Audit for about eighteen years?

20 A. Yes, sir.

21 Q. And that you examined the corporate returns, you audited
22 the corporate returns of somewhere between ten and
23 twenty corporations a year?

24 A. Yes.

25 Q. So that you were a man of large and varied experience

1 in the field of corporate audits, is that right?

2 A. Yes, sir.

3 Q. You also told us, I believe, that it was sometime
4 later in July that you were assigned to audit the
5 income tax returns of Main Chrysler-Plymouth, Inc., at
6 2649 Bailey Avenue, Buffalo?

7 A. About the beginning of July, yes.

8 MR. McDONOUGH: Would you mark these two photographs for
9 identification?

10 (Thereupon photographs referred to were
11 marked Defendant's Exhibit 1 and 2 for
12 identification.)

13 BY MR. McDONOUGH:

14 Q. Mr. Shea, does Defendant's Exhibit 1, which was taken
15 only a week or so ago, and again with the exception
16 of any parked or moving automobiles, correctly repre-
17 sent the general front view of Main Chrysler-Plymouth,
18 2649 Bailey Avenue, as it was back in 1972 when you
19 were doing this audit?

20 A. It appears to be correct, sir.

21 Q. Now, can you indicate approximately where -- I realize
22 you couldn't see it here -- if I held it up here, about
23 where is the salesman's office which was given to you
24 for your use while you were making the audit?

25 A. All right, it would be to the left of the front window,

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1 behind the car, on the diagonal from where I am sitting,
2 against the wall, I believe, sir.

3 Q. Would you put your finger on the approximate area, if
4 we could look through the wall?

5 A. It would be approximately in here, sir.

6 Q. Thank you.

7 THE COURT: Would you mark that with an X? Do you
8 have a marking pencil there?

9 BY MR. McDONOUGH:

10 Q. Just mark it lightly, if you will, the approximate
11 area where this salesman's office that you used would
12 be?

13 A. Of course now, this I don't recall, Mr. McDonough,
14 through here. Now, if this is a corridor passing
15 through the back of the building, it would have been
16 on this side, otherwise it would have been over here.
17 I'll mark it right there.

18 Q. Now, in fairness to everyone, you don't mean it was
19 right at the window?

20 A. No.

21 Q. It was somewhere in the interior?

22 A. Right, back from the window.

23 MR. McDONOUGH: I would like to offer this in evidence,
24 your Honor.

25 MR. STEWART: May I see it?

T. S. Shea, for Government, Cross.

1 MR. McDONOUGH: It is just a general view of the premises,
2 your Honor.

3 MR. STEWART: I have no objection, your Honor.

4 THE COURT: Received.

5 (Thereupon Defendant's Exhibit 1, pre-
6 viously marked for identification, was
7 received and marked in evidence.)

8 MR. McDONOUGH: Would your Honor like to see it?

9 THE COURT: Yes. I can't find the X.

10 MR. McDONOUGH: It is on the window area, your Honor.

11 THE COURT: Would you mark it distinctly so I can see
12 it, and everyone can see it, with an X?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay.

15 MR. McDONOUGH: May the jurors see this, your Honor?

16 THE COURT: Keep inquiring, you can give it to the
17 jury, you keep questioning.

18 MR. McDONOUGH: All right, your Honor.

19 BY MR. McDONOUGH:

20 Q. Here is Defendant's Exhibit 2, which was also taken
21 about a week ago, with the exception of some of the
22 plaques or furniture or objects, does this accurately
23 represent the general area of Mr. Robert Sciolino's
24 private office as it existed back in the summer of
25 1972?

1 A. This picture was taken from the doorway of the office.
2 This shows, Mr. McDonough, two walls here. There is
3 another wall here and, of course, another wall on this
4 side. It appears to be his office.

5 Q. Is the desk and Mr. Sciolino's chair in the same approxi-
6 mate location it was two years ago?

7 A. Yes, sir.

8 Q. There is a credenza or a back table back there?

9 A. Yes, sir.

10 Q. Was the credenza or back table there two years ago?

11 A. Yes, sir.

12 MR. McDONOUGH: All right. I will offer this in evidence,
13 your Honor.

14 MR. STEWART: May I have just a moment, your Honor?

15 THE COURT: Yes.

16 MR. STEWART: I have no objection.

17 THE COURT: Received.

18 (Thereupon Defendant's Exhibit 2, previous-
19 ly marked for identification, was received
20 and marked in evidence.)

21 MR. McDONOUGH: May I show this to the jury, your Honor?

22 THE COURT: Yes.

23 BY MR. McDONOUGH:

24 Q. Now, so that there is no doubt, Defendant's Exhibit 2
25 does not represent the salesman's office where you used

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1 to do your work, on the contrary, it represents Mr.
2 Sciolino's private office where you said you saw the
3 gun box, is that true?

4 A. Yes.

5 Q. Now, this was the first time you had audited this cor-
6 poration's tax returns, was it not?

7 A. Yes, sir.

8 Q. And I believe you told us -- strike that out. In con-
9 nection with your audit of the corporate affairs, did
10 you also demand that Mr. Robert Sciolino produce his
11 individual tax returns, that is, his joint returns with
12 his wife for 1970 and 1971?

13 A. I requested his retained copies.

14 Q. You got them, did you not?

15 A. Eventually, yes, sir.

16 Q. You also requested copies of the individual tax returns
17 of Mr. Testa, the secretary, did you not?

18 A. Yes, sir.

19 Q. And you got them?

20 A. Yes, sir.

21 Q. You also requested the individual tax returns of William
22 Sciolino, Mr. Robert Sciolino's brother, for those two
23 years?

24 A. Yes.

25 Q. You got those, did you not?

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1 A. Yes, sir.

2 Q. You learned that the corporation's accountants were
3 the firm of Lathan, Lumsden, McCormick & Adams, here
4 in Buffalo?

5 A. Yes.

6 Q. Did you learn that a Mr. Steigmeir of that firm was
7 the man who handled the tax returns for this company?

8 A. Yes, sir.

9 Q. You also learned soon after your audit started that
10 Mr. Robert Sciolino's corporate attorney was Mr. Kenneth
11 Cooper, did you not?

12 A. Yes, sir.

13 Q. You have talked to Mr. Cooper over the telephone?

14 A. Yes, sir.

15 Q. On at least one or perhaps more occasions during those
16 months?

17 A. Yes, at least one occasion, sir.

18 Q. If I can possibly shorten this up -- strike that all
19 out. The only -- strike that out. You were given
20 access -- strike that out. Most of your inquiries and
21 dealings were with Mr. Testa, were they not, in the
course of the audit?

A. Essentially.

Q. In other words, when you wanted to look at sales records,
25 Mr. Testa would produce them for you?

1 A. Not entirely, sir.

2 Q. He would produce some of them?

3 A. The formal books and records.

4 Q. And the one important thing that you did not get, at
5 least at first, was the franchise -- strike it -- was
6 Mr. Sciolino's agreement with the Chrysler Corporation,
7 is that true?

8 A. Yes, sir.

9 Q. You learned, did you not, that the Main Chrysler-Plymouth
10 landlord was the Chrysler Realty Corporation?

11 A. Yes.

12 Q. And you also learned that the Chrysler Realty Corpora-
13 tion in turn leased the property from some individual
14 who owned it, is that right?

15 A. Yes, sir.

16 Q. Did you see the Main Chrysler-Plymouth lease with the
17 Chrysler Realty Company?

18 A. I can't recall.

19 Q. You may have, you may not have?

20 A. I may have, I may not have, yes, sir.

21 Q. You also learned that this was a Delaware corporation,
did you not?

A. Yes.

25 Q. Did you also learn that it had been set up by Chrysler
some five years before Mr. Sciolino took over the agency?

1 A. Yes, sir.

2 Q. You made repeated inquiries as to the reason why it was
3 a Delaware corporation and not a New York State corpor-
4 ation?

5 A. No, sir.

6 Q. You did not?

7 A. No, sir.

8 Q. All right. But you did learn that it originally had
9 been incorporated by Chrysler --

10 A. Yes, sir.

11 Q. -- and not by Mr. Sciolino?

12 A. Yes, sir.

13 Q. Before you were given the individual returns, you testi-
14 fied on direct examination that Mr. Sciolino wanted to
15 know why you wanted to see his individual returns and
16 you explained?

17 A. Yes, sir.

18 Q. At what point in your audit were you assigned to the
19 salesman's office that you used?

20 A. The very first day of my audit, sir?

21 Q. Was that August 1?

22 A. No, the first day would have been July 24.

23 Q. July 24, thank you. Your audit continued for about two
24 months, didn't it?

25 A. On and off, sir.

T. S. Shea, for Government, Cross.

1 Q. When you asked for Mr. Sciolino's agreement with the
2 Chrysler Corporation he refused to give it to you, did
3 he not?

4 A. Yes.

5 Q. Would you mind repeating the reasons that you gave us
6 this morning why he said he didn't think you were en-
7 titled to it?

8 A. He gave me various reasons. He said he couldn't give it
9 to me, Chrysler would not allow him to give it to me. He
10 also said that he felt embarrassed about the agreement.

11 Q. Well, he also told you, did he not, that in order to
12 cause him less embarrassment and, to use the common
13 expression, to take him off the hook with Chrysler, if
14 you served a summons on him you would get it?

15 A. He didn't mention a summons, sir.

16 Q. What is a summons?

17 A. A demand for producing records.

18 Q. That is something that you as an Internal Revenue agent
19 are entitled to issue under the Internal Revenue Code
20 to any taxpayer or officer of a corporation to produce
21 certain records?

22 A. Yes, sir.

23 Q. He told you that not once but several times?

24 A. Yes.

25 Q. That if you wanted that Chrysler agreement you would

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1 have to serve him with a summons?

2 A. Yes, sir.

3 Q. Did he tell you he talked to his attorney about it, Mr.
4 Cooper?

5 A. That particular document, no, sir.

6 Q. All right. You never did serve him with a summons, did
7 you?

8 A. No, sir, I never have served a summons.

9 THE COURT: Do you mean a subpoena, Mr. McDonough?

10 MR. McDONOUGH: No, I believe it's called a summons in the
11 Internal Revenue Service.

12 BY MR. McDONOUGH:

13 Q. Isn't it called a summons?

14 A. I believe so, sir. It has been identified as both in
15 my experience, a summons and a subpoena.

16 Q. All right. Now, let me see if I can refresh your recol-
17 lection a little. Around the first week in August when
18 you were trying to get this Chrysler agreement, didn't
19 Mr. Sciolino tell you that he was going out to a new car
20 show at Reno, Nevada, a Chrysler new car show?

21 A. I believe he mentioned that at one time, sir.

22 Q. And, as a matter of fact, wasn't the Chrysler new car
23 show in Reno, Nevada the very next week after the pic-
24 ture episode on August 7 and the gun box episode on
25 August 8?

1 A. I can't recall the exact date, Mr. McDonough.

2 Q. Let's see if I can refresh your recollection further.
3 Didn't Mr. Sciolino say this, or this in substance,
4 after he told you several times that if you wanted the
5 Chrysler agreement you would have to serve him with a
6 summons or subpoena, didn't he tell you, 'When I go out
7 to Reno to the new car show I'll talk with some of the
8 big brass in Chrysler and see if I can get their okay
9 to show it to you'?

10 A. No, sir.

11 Q. You say he never did?

12 A. He never did say it, sir, to the best of my recollection.

13 Q. You are prepared to swear he didn't or is it that you
14 don't recall?

15 A. I would say that he never made that statement to me, sir.

16 Q. After he got back from the new car show at Reno, Nevada
17 did he not in fact give you the Chrysler agreement?

18 A. There was a period in time where he did give it to me,
19 but I believe this was sometime in September.

20 Q. He did give it to you?

21 A. Eventually, sir, yes, sir.

22 Q. Did you testify on direct examination that you never
23 did see the Chrysler agreement?

24 A. Up to the point of the questioning, sir.

25 Q. You did see the agreement?

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1 A. Eventually, sir.

2 Q. You didn't tell us that this morning?

3 A. No, I was asked up to the point, the date, up to a
4 certain date, sir, if I recall.

5 Q. You say now it was in September when you got it?

6 A. I'm not sure, but I did get it eventually.

7 Q. It may have been in August?

8 A. The latter part of August.

9 Q. Well, you have told us the gun box episode took place
10 on an earlier date?

11 A. Yes, sir.

12 Q. It couldn't have been more than two or three weeks
13 after that that you got it, at the very latest, isn't
14 that true?

15 A. Yes, sir.

16 Q. By the way, on July 24, 1972, you interviewed Mr. Robert
17 Sciolino at some length concerning his personal back-
18 ground, education, business experience, and so forth,
19 did you not?

20 A. Yes, sir.

21 Q. Let's get down to August 7, the first episode of which
22 you complain as constituting a possible intimidation
23 or threat, the picture taking episode. You were work-
24 ing in this cubicle or salesman's office that day, were
25 you not?

1 A. Yes, sir.

2 Q. Were you examining some records or making up some work-
3 sheets or anything like that?

4 A. Yes, sir.

5 Q. What time of day did this incident happen?

6 A. About two thirty-five, sir.

7 Q. Had you noticed anything about the condition of that
8 cubicle or the building generally?

9 A. No, sir.

10 Q. That wasn't your job -- withdraw the question. You were
11 not there for the purpose of evaluating the building
12 or looking for any deterioration or damage or anything
13 of that sort?

14 A. No, sir, I was examining records.

15 Q. You were examining records. Now, would you mind telling
16 us -- let's assume you are at the chair there, was there
17 a desk in front of you?

18 A. Yes.

19 Q. And you say the first thing you heard was a flash?

20 A. No.

21 Q. Or saw?

22 A. It startled me, sir.

23 Q. When you looked up where was Mr. Sciolino?

24 A. He was standing right outside the entrance to the
25 cubicle.

1 Q. Was the entrance to the cubicle --

2 A. It was to my right.

3 Q. -- ahead of you?

4 A. In front of me, to my right.

5 Q. So that he would be generally -- I'm not trying to pin
6 you to any distance -- but generally over there?

7 A. Yes.

8 Q. How many feet away from you?

9 A. I would say four or five feet.

10 Q. Somewhere in this area?

11 A. Just outside the office.

12 Q. Did he have a camera in his hand?

13 A. Yes, sir.

14 Q. You had not been watching him before that?

15 A. No, I was engrossed with my work.

16 Q. How many pictures he may have taken of other areas of
17 that salesroom before he took this picture you don't
18 know?

19 A. There was only one flash I noted.

20 Q. That is the only one you noted?

21 A. Yes.

22 Q. That is a fairly large salesroom, isn't it?

23 A. It is, it is a substantial size.

24 THE COURT: How long had you been there?

25 THE WITNESS: I beg your pardon?

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1 THE COURT: How long had you been in that room?

2 THE WITNESS: I had been working --

3 THE COURT: Before the flashlight?

4 THE WITNESS: Since returning from my lunch break.

5 THE COURT: How long?

6 THE WITNESS: About an hour and a half.

7 BY MR. McDONOUGH:

8 Q. All right. There stood Mr. Sciolino with the camera
9 in his hands, is that right?

10 A. Yes, sir.

11 Q. You said that you -- so that I quote you accurately --
12 you said what did you do that for or what's that for?

13 A. What's that for?

14 Q. Yes. And you quoted Mr. Sciolino as saying, "That's
15 for posterity, so I can show it around."?

16 A. Yes, sir.

17 Q. Is that right?

18 A. Yes, sir.

19 Q. Whether he was actually taking a photograph of you or
20 whether you were included within the purview of a photo-
21 graph he was taking, you don't know, do you?

22 A. He told me he was taking my picture, sir.

23 Q. You said that after you asked him what that was for --

24 A. Yes.

25 Q. -- he said it was for posterity?

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1 A. Yes, sir.

2 Q. Irrespective of what he said, what the actual purpose
3 of taking the photograph was, you don't know, do you?

4 A. I don't know what was on his mind, sir.

5 Q. All right. How many photographs he had taken before
6 that in other areas of the building, you don't know?

7 A. No, sir.

8 Q. Now, how many pictures he took after that in other
9 areas of the building, you don't know?

10 A. No, sir.

11 Q. And whether there was any damage or deteriorated mater-
12 ial on the walls of the office in which you worked, you
13 paid no attention to that?

14 A. No, sir.

15 Q. You also testified, I believe, Mr. Shea, that later
16 that afternoon Mr. Sciolino came back and said that he
17 was on medication for his stomach and the medicine he
18 took was responsible for his behavior?

19 A. Yes.

20 Q. By behavior I assume you meant him taking the picture?

21 A. I imagine that's what he meant.

22 Q. That is what you understood?

23 A. Yes.

24 Q. You still insisted you had not consented to have your
25 picture taken?

1 A. Yes, sir.

2 Q. You claim that Mr. Sciolino didn't offer to return the
3 picture?

4 A. No, sir.

5 Q. All right. That is your recollection?

6 A. That is my recollection, sir.

7 Q. At any time?

8 A. At any time.

9 Q. Did you ever ask for it?

10 A. While I was sitting in the office one day he offered me
11 his picture.

12 Q. Who?

13 A. Mr. Sciolino offered me a picture of himself.

14 Q. Are you sure it was his?

15 A. It appeared to be him, it looked like him.

16 Q. Did you ever take it?

17 A. I held it in my hand and returned it to him.

18 Q. All right.

19 A. It was an old picture.

20 Q. You say he offered you his picture?

21 A. Yes, sir.

22 Q. By the way, through this whole investigation or audit,
23 you and Mr. Sciolino talked on numerous subjects not
24 related to the audit at all, did you not?

25 A. We did, sir.

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1 Q. You talked about sports, did you not?

2 A. Yes, sir.

3 Q. You learned that he was an ardent Buffalo Bills foot-
4 ball fan?

5 A. Yes, sir.

6 Q. You talked football?

7 A. Yes, sir.

8 Q. Do you remember an occasion -- strike that out. Specif-
9 ically, on August 7, the picture taking day, do you re-
10 member after he told you about -- you say he told you
11 that his stomach bothered him and the medication caused
12 his conduct -- do you remember the subject of F. Lee
13 Bailey, the well-known lawyer, coming up?

14 A. Yes.

15 Q. Did you and he discuss F. Lee Bailey?

16 A. Yes.

17 Q. His court cases and his ability and prowess?

18 A. Just briefly, sir.

19 Q. Without going into the specific substance, that hap-
20 pened on several occasions, that Mr. Sciolino would
21 change the subject away from the audit and discuss
22 sports, F. Lee Bailey, and other noncontroversial and
23 unrelated matters with you?

24 A. That is right.

25 Q. And you would participate in the talk?

1 A. Yes. We had established a rapport.

2 Q. Getting to the next day, the day of the gun box episode,
3 Mr. Shea, you never saw a gun, did you?

4 A. Oh, yes, sir -- that day, no, sir.

5 Q. That day?

6 A. No, sir.

7 Q. And you never -- at that time at least you didn't know
8 whether he had any permit for a gun at all, did you?

9 A. No, sir.

10 Q. Now, what time of day did the gun box episode take
11 place?

12 A. I have the time in my records, sir.

13 Q. Can you remember without referring to records? Morning
14 or afternoon?

15 A. It was morning, sir.

16 Q. Pardon?

17 A. It was morning.

18 Q. In the morning?

19 A. Early.

20 Q. Again you asked for the Chrysler agreement?

21 A. Yes.

22 Q. And again he told you that you would have to get a sum-
23 mons for it?

24 A. He refused to give it to me, and invited me into his
25 office.

- 1 Q. Didn't he tell you at that time that he would be glad
2 to show you the ASR Chrysler records?
- 3 A. Yes, sir.
- 4 Q. Do you remember what the ASR stood for?
- 5 A. No, I don't, sir.
- 6 Q. Would Accounting System Reviews refresh your recollec-
7 tion?
- 8 A. Yes, sir.
- 9 Q. He offered to show you the Accounting System Reviews
10 which Chrysler Motors compelled him to use in his busi-
11 ness, isn't that true?
- 12 A. Yes, sir.
- 13 Q. All right. That is what he went to his desk to get,
14 wasn't it?
- 15 A. No, he led me to believe he was looking for the Chrysler
16 agreement.
- 17 Q. Didn't you ask at that time whether -- didn't he tell
18 you that he would show you the Accounting System Reviews?
- 19 A. I don't know if that was the same day or not. There
20 was a point in time he did offer to show those to me,
21 but on this specific day we went to get the agreement,
22 as I understood it.
- 23 Q. He told you he would show it to you without a summons?
- 24 A. It appeared to me as if this day he was going to give
25 it to me.

1 Q. He hadn't said that?

2 A. When I asked for it he invited me into his office.

3 Q. Isn't that when he said, 'I'll show you the Accounting
4 System Reviews'?

5 A. I believe it was another day at that specific time in
6 the morning.

7 Q. All right. Now, may I have your marking pencil again?
8 I would like you to take this marking pencil and mark,
9 if you will, first where Mr. Sciolino was sitting, if
10 he was sitting, in his desk chair shown there.

11 THE COURT: Mark it with the letter S.

12 THE WITNESS: All right. The chair from the picture,
13 appears to be facing to the right of the
14 desk, I don't know if the office has been
15 changed around or not, but this is the
16 chair, of course. You want me to put an
17 S on the back of the chair?

18 THE COURT: Put it where he was sitting.

19 THE WITNESS: I can't see the seat of the chair, it's
20 hidden or obscured by the desk.

21 BY MR. McDONOUGH:

22 Q. We can see one arm and the back?

23 A. Yes, sir.

24 Q. Would you put it as close as you can on the arm of the
25 chair?

1 A. He wasn't sitting on the arm.

2 Q. We understand that. You can't see the seat or the bot-
3 tom, that's as close as you can mark it --

4 A. Right.

5 Q. -- on this photograph. Would you mind marking it with
6 an X or, if I may, can he use -- can you put T.S. for
7 your initials -- I will withdraw that question. Was
8 there a chair, a visitor's chair, somewhere over here?

9 A. The other wall is out here. I was sitting on one of
10 those chairs against the wall.

11 Q. As close as you can mark on this picture --

12 A. If I mark the --

13 Q. -- on the wide edge, please mark about where you were,
14 put T. S., please.

15 A. (Witness marks photograph.)

16 Q. Thank you.

17 A. You're welcome, sir.

18 Q. You told us that the credenza, the back table, was in
19 the same position then as shown on this picture, did
20 you not?

21 A. Yes, sir.

22 Q. So that he was facing you and you were facing him?

23 A. Yes, sir.

24 Q. As you sat there, is that right?

25 A. Yes, sir.

T. S. Shea, for Government, Cross.

1 Q. Did Mr. Sciolino first go into the drawers on the left
2 side?

3 A. No, sir.

4 Q. Are you sure he didn't?

5 A. Yes, sir.

6 Q. Now, for our purposes let's assume that I am you and
7 you are Mr. Sciolino seated behind the desk, this would
8 roughly be our positions?

9 A. Yes, sir.

10 Q. The credenza would be behind you?

11 A. Pardon me, I think there is a file cabinet on the side.

12 Q. The credenza is directly to the rear of the desk?

13 A. The auxiliary or credenza desk was behind Mr. Sciolino's,
14 that I recall.

15 Q. He did not go through the left drawers of his desk first
16 before he went to the right drawers?

17 A. No, sir.

18 Q. That you remember?

19 A. He looked on the auxiliary desk, as he walked in he
20 looked on the file cabinet, he looked on the auxiliary
21 desk, and I sat down and then he sat down, and he
22 reached and opened his right-hand desk drawer.

23 Q. What did he take out from the right-hand desk drawer?

24 A. As he reached he took out a box and he placed it and
25 appeared to rifle through papers.

T. S. Shea, for Government, Cross.

1 Q. Didn't he take a box and also some papers out?

2 A. I don't recall him taking papers out.

3 Q. Didn't he take the box and papers out?

4 A. I don't recall. I recall the box.

5 Q. Did he finally then bring out the ASR, the Accounting
6 System Reviews, from the bottom of that drawer?

7 A. No, sir.

8 Q. Didn't he hand you the Accounting System Review?

9 A. No, sir.

10 Q. Are you sure of that?

11 A. I'm pretty sure of that.

12 Q. Pretty sure, all right. Where did he put the box?

13 A. He placed it on the desk to his right.

14 Q. Not on the credenza?

15 A. No, on the desk.

16 Q. On the desk?

17 A. Right.

18 Q. Was your mind clear on that when you testified before
19 the grand jury in March 1973?

20 A. Fairly clear, sir.

21 Q. Did you testify to the best of your ability, with com-
22 plete truthfulness and accuracy, as you then remembered
23 the facts?

24 A. Yes, sir.

25 MR. McDONOUGH: Would you mark this for identification,

T. S. Shea, for Government, Cross.

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1 please? Perhaps we should mark the
2 original rather than mark the copy.

3 MR. O'KEEFE: I have it here.

4 MR. McDONOUGH: All right.

5 THE COURT: Mark it 3501.

6 (Thereupon grand jury testimony was marked
7 Defendant's Exhibit 3501 for identification.)

8 MR. McDONOUGH: Can we stipulate, gentlemen, that Govern-
9 ment counsel had the original which was
10 marked, and I am using a copy for question-
11 ing Mr. Shea?

12 MR. STEWART: Yes.

13 MR. McDONOUGH: Page 7, gentlemen.

14 BY MR. McDONOUGH:

15 Q. At page 7, starting at line 18, did you tell the grand
16 jury with reference to that incident --

17 MR. STEWART: Excuse me. Your Honor, I would ask that
18 the witness be allowed to read over that
19 portion which is in issue to see if it re-
20 freshes his recollection before it is read
21 to the jury.

22 MR. McDONOUGH: I propose to prove a contradictory state-
23 ment.

24 THE COURT: The objection is overruled, proceed.

25 BY MR. McDONOUGH:

T. S. Shea, for Government, Cross.

1 Q. I will start with line 16: "This was done on August 8
2 at about 9:40 a.m. Mr. Sciolino invited me into his
3 office. He asked me to have a seat. He went through
4 the motions of leafing through papers on his desk, and
5 then he reached into the upper right-hand corner of
6 his desk drawer and he removed a box and placed the
7 box on the table." Did you so testify?

8 A. Yes, sir, apparently.

9 Q. There is no question that the table was the credenza?

10 A. There is no table in the office. The credenza is an
11 auxiliary desk. The desk he was seated behind again
12 was also a desk. There is no table I noted in the
13 office.

14 Q. You didn't tell the grand jury that he put it on the
15 desk, did you?

16 A. Well, this is just a substitute word for the desk. He
17 placed it in front of him on the desk, and I could
18 read the label from where I was sitting.

19 Q. We will get to that. You claim that the word table
20 and desk are interchangeable?

21 A. From the situation involved, yes.

22 Q. Isn't the word table more applicable to the credenza
23 in the rear of the desk than it is to the desk?

24 THE COURT: That is argumentative.
25

1 BY MR. McDONOUGH:

2 Q. Would you concede that the word table could apply to
3 the credenza shown in Defendant's Exhibit 2?

4 A. No, sir, not in that --

5 MR. STEWART: I object to that.

6 THE COURT: Argumentative, yes. Sustained, strike it
7 out.

8 BY MR. McDONOUGH:

9 Q. Now, the box you saw, what did you see on it?

10 A. I saw the white imprinted label on the edge of the box,
11 and it was labeled Smith & Wesson, .38 Chief Special:
12 I could read this from where I was sitting.

13 Q. How big was the box?

14 A. Again, exactly and specifically, I can't recall, but I
15 would say maybe six to eight -- or maybe even square,
16 six, eight inches square.

17 Q. Did you ever look inside?

18 A. No.

19 Q. Did you ever see what was inside?

20 A. No, sir.

21 Q. Did he put that away before he continued to talk to
22 you?

23 A. No, sir.

24 Q. Did he leave it where it was?

25 A. Yes, sir.

T. S. Shea, for Government, Cross.

- 1 Q. Did he put it back in his desk?
- 2 A. No, sir.
- 3 Q. That you remember?
- 4 A. Yes, sir.
- 5 Q. Well, then after that I think you told about him dis-
- 6 coursing on the development of the human mind, man was un-
- 7 civilized, he was interested in sports, killing, basic-
- 8 ally unpredictable, is that right?
- 9 A. Yes, sir.
- 10 Q. You quoted him -- now, would you mind telling us what
- 11 you said he said to you then about no telling?
- 12 A. "There is no telling what man might do because he is
- 13 unpredictable if backed into a corner. There is no
- 14 telling what I might do if I was backed into a corner
- 15 and there was no way out."
- 16 Q. He said, "There is no telling what man might do if
- 17 backed into a corner."?
- 18 A. Right.
- 19 Q. Then he said, "There is no telling what I might do,"
- 20 referring to himself?
- 21 A. Yes, sir.
- 22 Q. All right. There is no question about that in your mind,
- 23 is there?
- 24 A. None whatsoever.
- 25 Q. All right. Did you also testify on that phase of the

T. S. Shea, for Government, Cross.

1 case before the grand jury on March 20, 1973?

2 A. I believe I did.

3 Q. Did you testify accurately and completely and truth-
4 fully, to the best of your recollection?

5 A. To the best of my recollection and knowledge at the
6 time.

7 Q. Would you say that your recollection of what was said
8 and what was done was a little fresher and better on
9 March 20, 1973, about seven months after the event,
10 than it is today, almost two years after?

11 A. This incident is indelible in my mind, sir.

12 Q. All right, sir. Well, page 8, gentlemen. Did you quote
13 him, starting at Line 11: "He said, 'Man is basically
14 an uncivilized person.' He said, 'I don't know what you
15 would do or what anyone would do if you were backed into
16 a corner and there was no way out.'", is that right?

17 A. Yes.

18 Q. Was that the truth?

19 A. Yes, sir.

20 Q. He didn't say "I", he said "you", did he not?

21 A. Perhaps -- maybe this isn't complete, Mr. McDonough.

22 Q. Perhaps or not, that is what you told the grand jury?

23 A. Yes, sir.

24 Q. You didn't quote him as saying there is no telling what
25 I, Sciolino, might do?

T. S. Shea, for Government, Cross.

1 A. No, sir.

2 Q. You quoted him as saying there was no telling what you
3 might do?

4 A. Yes, sir.

5 Q. Meaning you, Shea?

6 A. Right, sir.

7 Q. You quoted Mr. Sciolino on a later date, on August 23,
8 1972, as saying he was investigating you, is that right?

9 A. Yes, sir.

10 Q. Meaning he, Sciolino, was investigating you, Shea?

11 A. Yes, sir.

12 Q. There was nothing in your record that you feared inves-
13 tigation, was there?

14 A. No, sir.

15 Q. All right. Are you sure that was on August 23 or could
16 it have been an earlier date?

17 A. To the best of my recollection, sir, it was August 23.

18 Q. All right. Mr. Shea, apropos of this subject, prelim-
19 inarily, you got quite a few telephone calls while you
20 were at the Main Chrysler-Plymouth audit, did you not,
21 from your office and from others?

22 A. I wouldn't say quite a few, sir, no.

23 Q. Some?

24 A. There perhaps may have been some.

25 Q. There were times when you were there at the audit, and

1 there were other days when you were not there, is that
2 right?

3 A. Yes.

4 Q. Do you remember telling Mr. Testa one time that when
5 your superiors were away you had to be down running the
6 office?

7 A. I was acting assistant group supervisor.

8 Q. And you told him that, did you not?

9 A. Yes, sir.

10 Q. Now, in connection with any possible investigation of
11 you, did Mr. Sciolino ask you at one time, "Mr. Shea,
12 are you just a field auditor or are you something else,
13 a special agent or something of that sort?" Strike that
14 out. Did he say, "Are you just a field auditor or are
15 you something bigger or something higher?"

16 A. I can't recall that, Mr. McDonough.

17 Q. And do you remember him telling you that they were going
18 to find out whether you were a regular field auditor or
19 whether you were in some higher-up position?

20 A. No, sir.

21 Q. Do you remember him calling his attorney about that very
22 subject one day while you were there?

23 A. No, sir.

24 Q. You do remember talking to Mr. Kenneth Cooper, his attor-
25 ney?

T. S. Shea, for Government, Cross.

1 A. Yes, sir.

2 Q. Was that with respect to whether or not this was a
3 regular field audit or something else?

4 A. I don't believe so, sir.

5 Q. All right. Mr. Sciolino asked you on that occasion to
6 talk to Mr. Cooper on the phone, didn't he?

7 A. Yes.

8 Q. You did so, did you not?

9 A. Yes, sir.

10 Q. You quoted him as saying on August 23 that you were one
11 of the top three men, why were you investigating him,
12 do you remember him saying that?

13 A. Yes.

14 Q. You were one of the top three men?

15 A. I was one of the highest grade men in my section.

16 Q. And you were acting crew chief?

17 A. When my supervisor was away, sir.

18 Q. When did you say you were reassigned to this audit?

19 A. I was taken off that audit on I believe the latter part
20 of August, temporarily.

21 Q. You mean put on some other job?

22 A. Other work.

23 Q. Then you were reassigned to Main Chrysler?

24 A. I came back again.

25 Q. Which was when?

T. S. Shea, for Government, Cross.

1 A. Sometime in September, sir.

2 Q. When did you complete your work?

3 A. Pardon?

4 Q. When did you complete your work as to Main Chrysler?

5 A. I never did complete it.

6 Q. When was the last time you visited there?

7 A. I think October 14 was the last stop I made at Main
8 Chrysler.

9 Q. You were there on September 25, 1972, were you not?

10 A. Yes, sir.

11 Q. You had a tape recorder on you, did you not?

12 A. Yes, sir.

13 Q. Would you mind telling us how you attached this gear
14 to your body?

15 A. I didn't attach it, sir.

16 Q. Who did?

17 A. A special agent of the U. S. Inspection Service.

18 Q. And what part of your body was it on?

19 A. That was on my hip, sir.

20 Q. And did you turn that on while you were talking to
21 Mr. Robert Sciolino?

22 A. I never touched it, sir.

23 Q. You mean --

24 A. Other than wearing it, I had no control over it.

25 Q. You mean it was set?

1 A. It was set.

2 Q. You had conversation with Mr. Sciolino that day?

3 A. Yes, sir.

4 Q. You had conversation with Mr. Testa, did you not?

5 A. Yes.

6 Q. You had conversation with Mr. Sciolino's brother, did
7 you not?

8 A. On that day I don't believe so.

9 Q. At least Mr. Robert Sciolino and Mr. Testa?

10 A. Yes, sir.

11 Q. And all the time this tape recorder that you had on
12 your body was taking down and recording what was said?

13 A. Yes, sir.

14 MR. McDONOUGH: I believe that is all, Mr. Shea. Thank you.

15 THE WITNESS: Thank you, sir.

16 REDIRECT EXAMINATION BY MR. STEWART:

17 Q. Mr. Shea, as you conducted this audit during October of
18 1972, did you on a daily basis make up notes of the
19 audit?

20 A. Yes, sir.

21 Q. Or your dealings or your contacts while doing the audit?

22 A. Yes, sir.

23 Q. Did you then convert those notes into typed notes?

24 A. Yes, sir.

25 MR. STEWART: Would you mark this, please?

T. S. Shea, for Government, Re-direct.

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(Thereupon document referred to was marked
Government's Exhibit 1 for identification.)

BY MR. STEWART:

Q. I will show you now an item which has been marked Government's Exhibit 1 for identification purposes, and ask you if you can identify that?

A. Yes, sir.

Q. What is it?

A. This is a copy of my typed notes.

Q. Sir, were those notes made prior to the time that you appeared in the grand jury?

A. Yes, sir.

Q. Now, I direct your attention specifically to Page 4 of the notes, the entry under the date or what appears to be the date 8/8/72, and specifically referring to Line 7 from the bottom, I wonder if you would read that, sir?

MR. McDONOUGH: Well, you mean aloud?

MR. STEWART: Yes, sir.

MR. McDONOUGH: I object to it, if the Court please.

THE COURT: Sustained.

BY MR. STEWART:

Q. Did you at that time in these notes indicate that the defendant had said to you that he didn't even know what he might do if backed into a corner and had no way out to escape?

1 MR. McDONOUGH: I object to that.

2 THE COURT: Sustained. Strike the question, and I
3 direct the jury to disregard it. I remind
4 you again that counsel's questions are not
5 evidence.

6 MR. STEWART: May I be heard on the law on that point?

7 THE COURT: No.

8 MR. STEWART: I have a specific point --

9 THE COURT: I know what you are trying to do, you are
10 not doing it.

11 BY MR. STEWART:

12 Q. Mr. Shea, if you will, again just referring to the
13 portion that I have previously indicated under the entry
14 of August 8, would you simply read that to yourself?

15 A. (Witness examines document.)

16 Q. That is the section beginning seven lines from the bot-
17 tom.

18 A. (Witness examines document.)

19 Q. Have you had an opportunity to read that?

20 A. Yes, sir.

21 Q. Do you recall now specifically what the defendant,
22 Robert Sciolino, said to you with respect to -- as he
23 had the gun box on the table -- with respect to the
24 nature of man and what he might do?

25 MR. McDONOUGH: I object to it, repetitious.

1 THE COURT: Sustained.

2 BY MR. STEWART:

3 Q. This note was typed by you prior to the grand jury pro-
4 ceeding?

5 A. Yes.

6 MR. McDONOUGH: Objected to, immaterial.

7 THE COURT: Also repetitious.

8 MR. STEWART: I would move this portion of the document
9 be admitted as being probative of the
10 truthfulness of the statement.

11 MR. McDONOUGH: I object to it.

12 THE COURT: What is your objection?

13 MR. McDONOUGH: I object to it on the grounds there is no
14 claim this is his past recollection.

15 THE COURT: May I see it?

16 MR. McDONOUGH: May I know line by line what parts are
17 being offered?

18 MR. STEWART: I will show you.

19 THE COURT: Do you wish to see the quoted portion, Mr.
20 McDonough?

21 MR. McDONOUGH: Mr. Stewart has indicated that to me.
22 Apparently five lines are being offered.
23 I object to it on the grounds that this is
24 not a case where we attack a statement, a
25 recent fabrication, I showed him his grand

1 jury testimony as a prior contradictory
2 statement.

3 THE COURT: This is offered as a prior consistent state-
4 ment, I'm sure. Overruled.

5 BY MR. STEWART:

6 Q. Mr. Shea, Mr. McDonough asked you whether you had had
7 conversation with Mr. Sciolino throughout the course
8 of the audit, that is, other conversations dealing
9 with sports and matters like that?

10 A. Yes, sir.

11 Q. I believe you answered that you had, is that right?

12 A. Yes, sir.

13 Q. After the incident on August 8, why did you not leave
14 the premises and not come back?

15 A. I had a job to do. I was making the best of a bad
16 situation.

17 MR. McDONOUGH: May I have that answer read back?

18 THE COURT: Would you read it, please?

19 MR. McDONOUGH: The question and answer.

20 (Thereupon reporter read the last question
21 and answer.)

22 MR. McDONOUGH: If the Court please, I move to strike it,
23 incompetent.

24 THE COURT: Strike out the last sentence. Is that
25 satisfactory?

1 MR. McDONOUGH: Yes, your Honor.

2 BY MR. STEWART:

3 Q. Mr. McDonough asked you about the incident with the
4 tape recorder in September, which is beyond the period
5 of this indictment. That had nothing to do with this
6 particular defendant, did it?

7 A. No, sir.

8 MR. McDONOUGH: I object to that.

9 THE COURT: Overruled. Yes or no.

10 THE WITNESS: No, sir.

11 MR. STEWART: I have no further questions.

12 MR. McDONOUGH: Nothing further, Mr. Shea.

13 MR. STEWART: Your Honor, may the witness be excused?

14 THE COURT: Yes.

15 MR. STEWART: You may step down.

16 THE WITNESS: Thank you, your Honor.

17 (Witness excused.)

18 C H R I S T I N E M. G I A R D I N A, called as a wit-
19 ness on behalf of the Government, and being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. O'KEEFE:

22 Q. Miss Giardina, are you appearing here today in response
23 to a subpoena which was levied upon the Office of
24 Pistol Permits for Erie County to produce a pistol per-
25 mit for one Robert S. Sciolino?

1 A. Yes.

2 Q. Were you designated by the director of that office to
3 appear for him today and produce that record.

4 A. Yes, I was.

5 Q. And did you cause a search of the records to be made?

6 A. Yes.

7 Q. Did you find a record on Robert Sciolino?

8 A. Yes, I did.

9 MR. O'KEEFE: Your Honor, at this time we have an original
10 and a copy. We would like to submit these
11 to the Court and to defense counsel to see
12 that they are exact and to submit the copy
13 in lieu of the original so she can return
14 that.

15 MR. McDONOUGH: Your Honor, I am not going to raise any
16 technical objection, but I object to the
17 competency of this evidence for the reasons
18 stated in my trial brief, on the grounds
19 that Mr. Shea has affirmatively testified
20 that at the time of this audit he didn't
21 know whether Mr. Sciolino had a gun or had
22 a permit for it or not.

23 THE COURT: Overruled.
24 (Thereupon document previously referred to
25 was marked Government's Exhibit 2 for

1 identification.)

2 BY MR. O'KEEFE:

3 Q. Miss Giardina, I show you Government's Exhibit 2, and
4 ask you if that is a pistol permit, a permit to carry
5 a concealed weapon, issued to Robert Sciolino?

6 A. Yes, it is his application.

7 Q. Was this permit in effect during the period 15 July
8 1972 through 1 September 1972?

9 A. Yes, it was.

10 MR. O'KEEFE: If the Court please, the Government would
11 offer Government's Exhibit 2 in evidence.

12 MR. McDONOUGH: Your Honor, I object to it on the same
13 grounds.

14 THE COURT: Overruled.

15 MR. O'KEEFE: I have no further questions.

16 THE COURT: I'm sorry, let me see that for just a
17 moment. Overruled.

18 (Thereupon Government's Exhibit 2, previous-
19 ly marked for identification, was received
20 and marked in evidence.)

21 MR. McDONOUGH: May I have a few minutes to look at this,
22 please?

23 THE COURT: Yes.

24 MR. McDONOUGH: May I examine the witness now, your Honor.

25 THE COURT: Surely.

C. M. Giardina, for Government, Cross.

1 CROSS-EXAMINATION BY MR. McDONOUGH:

2 Q. Miss Giardina?

3 A. Yes, sir.

4 Q. This is the pistol license application of Mr. Robert
5 S. Sciolino, is it not?

6 A. Yes.

7 Q. Have you also brought the permit?

8 A. No, we don't have the permit.

9 Q. Oh, you don't have it. How recently have you had it?

10 A. You mean --

11 Q. Pardon me, you mean the holder of the permit has the
12 permit?

13 A. Yes.

14 Q. Don't you have a copy of it?

15 A. No.

16 Q. This shows the permit was issued, does it not?

17 A. Yes.

18 Q. When?

19 A. December 10, 1969.

20 Q. It is still in full force and effect, is it not?

21 A. Yes, it is.

22 Q. Do you remember when the Government first checked your
23 office to see about the existence of this gun permit?

24 A. No, I don't.

25 Q. Can you tell us about when it was?

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1 A. No, I can't.

2 Q. Is there anything on this license application or in
3 your records which would show the date that any agent
4 of the United States Government first checked to see
5 whether or not Mr. Sciolino had a pistol permit?

6 A. No.

7 MR. McDONOUGH: That is all, thank you.

8 MR. O'KEEFE: You are excused.

9 (Witness excused.)

10 MR. STEWART: May we have just a moment, your Honor.

11 THE COURT: Yes.

12 MR. STEWART: The Government rests, your Honor.

13 THE COURT: The jury may take a short recess.

14 (Thereupon the jury exited the courtroom
15 at 2:43 p.m.)

16 THE COURT: All right, Mr. McDonough.

17 MR. McDONOUGH: If your Honor please, the defendant moves
18 to dismiss the indictment, both counts
19 thereof, on the ground that the Government
20 failed to adduce sufficient evidence to
21 submit either count of the indictment to
22 the jury. With specific respect to the
23 first count, your Honor, I again call to
24 your Honor's attention the fact that there
25 is absolutely no proof of any force used

Motion to Dismiss the Indictment.

1 by this defendant or any alleged threat
2 of force against the agent, Mr. Shea.
3 I need not repeat the language used by the
4 Court in the Johnson case, the Arkansas
5 Court in the Glover case. For that mat-
6 ter, on a rereading of the Second Circuit's
7 language in the Bamberger case, decided
8 two years ago, Bamberger, far from being
9 an authority against this, it seems to me
10 is a strong authority in our favor. Of
11 course, the Bamberger facts were entirely
12 different. There was actual physical re-
13 sistance to the parole officers and the
14 prison guards. The question turns on
15 whether or not the Court's charge that
16 merely laying a finger on the Government
17 officer would be sufficient to constitute
18 a violation of Section 111. It seems to
19 me the Court sidestepped that to some de-
20 gree because it said even if that were not
21 the law, the proof in the Bamberger case
22 far exceeded the laying of a finger on the
23 agent. But the Bamberger decision is re-
24 plete with language which shows that to
25 constitute a violation of Section 111 not

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1 only must there be not only some threat
2 of use of force sometime in the indefinite
3 future but --

4 THE COURT: It said that was not enough.

5 MR. McDONOUGH: I beg your pardon?

6 THE COURT: Bamberger, as I recall, says the threat of
7 force sometime in the indefinite future
8 was not enough.

9 MR. McDONOUGH: Was not enough, yes, your Honor. Now, that
10 is as to the first count. As to the second
11 count I respectfully submit that the weak-
12 est reported case I could find was the
13 Glover case, the Arkansas case, where the
14 Ku Klux Klan pasted a label on the agent's
15 car saying this is your last warning or
16 words to that effect, and then the state-
17 ment of the defendant to the agent after-
18 wards that you have had one warning you
19 are not going to get another. Now, to con-
20 strue the mere taking of a picture and,
21 secondly, the removal of a gun box from
22 the desk and putting it either on the cre-
23 denza or on the desk, whatever, followed
24 by a discussion, a general discussion of
25 man's violent nature, plus a later

Motion to Dismiss the Indictment.

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1 statement that the defendant was investi-
2 gating Agent Shea, is to stretch the tenu-
3 ous thread of proof here out of all rela-
4 tion to reality in connection with a possi-
5 ble violation under the second count of
6 threats of force. It seems to me that the
7 mere fact that Agent Shea for some reason
8 claims subjectively to have had some appre-
9 hension or fear is immaterial. The enforce-
10 ment of this statute can't be made -- with-
11 draw that. The criterion for the applica-
12 tion of this section cannot be made on the
13 subjective reaction of the agent to what-
14 ever was done. There must be some objective
15 standard by which the expression "threats
16 of force" is to be gauged. It seems to
17 me that the Glover facts, the Ku Klux Klan
18 case, were far stronger than the facts in
19 this case. Nevertheless, the Court said
20 that even if threats of force were enough
21 to sustain a conviction under Section 111,
22 these would not constitute sufficient
23 threats of force.

24 THE COURT: I don't put much stock in that.

25 MR. McDONOUGH: Portions of that opinion was quoted by

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our Second Circuit.

THE COURT: By Judge Smith from Connecticut. Denied.
Will there be a defense?

MR. McDONOUGH: Yes, your Honor.

THE COURT: All right, call the jury.
(Thereupon the jury returned to the court-
room at 2:50 p.m.)

THE COURT: All right, Mr. McDonough.

MR. McDONOUGH: Mr. Robert Sciolino, will you take the
witness stand.

R O B E R T S. S C I O L I N O, called as a witness
on his own behalf, and being first duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. McDONOUGH:

Q. Mr. Sciolino, you are the defendant in this case?

A. Yes, sir.

Q. How old are you?

A. Thirty-six, sir.

Q. Are you married?

A. Yes, sir.

Q. What is your wife's name?

A. Mertice.

Q. This is she in the first row?

A. Yes.

Q. How many children do you have?

R. S. Sciolino, for Defendant, Direct.

1 A. Three, sir.

2 Q. Their names and ages, please?

3 A. Robert, 14 years old; Tina, 13 years old and Anthony,
4 7 years old.

5 Q. Where do you live?

6 A. In Clarence, sir.

7 Q. The street address?

8 A. 9140 Hillview.

9 Q. And how far did you go in school?

10 A. Up to within a few hours of my degree in Business Ad-
11 ministration.

12 Q. What university?

13 A. The University of Miami and the University of Buffalo.

14 Q. Did you have occasion to leave college at one time?

15 A. Yes, sir.

16 Q. For what?

17 A. Military service.

18 Q. When was that?

19 A. 1958, sir.

20 Q. What branch of the service were you in?

21 A. United States Army, sir.

22 Q. And did you have an honorable discharge from the Army?

23 A. An honorable discharge, sir.

24 Q. Did you go back to school after that?

25 A. I was married immediately after leaving the service.

1 I went to night school at the University of Buffalo
2 and summer school.

3 Q. Did you ever get your degree?

4 A. No, sir.

5 Q. When you left school finally, where did you first go
6 to work?

7 A. An automobile dealership, sir.

8 Q. Where?

9 A. A Ford dealership in Tonawanda, New York.

10 Q. In what capacity?

11 A. Salesman.

12 Q. Well, without giving us each company, did you there-
13 after continue to work as an automobile salesman for
14 some years?

15 A. Yes, sir.

16 Q. Give us the names of some agencies you worked at as a
17 salesman?

18 A. Ibbotson Ritchie Ford, Tonawanda; Kenton Dodge in Tona-
19 wanda; Crest Dodge, I believe it's West Seneca; Dietrich
20 Oldsmobile in Williamsville, sir.

21 Q. Did there come a time when you first went to work for
22 Main Chrysler-Plymouth?

23 A. Yes, sir. I signed an agreement in 1969 with Main
24 Chrysler-Plymouth on a probationary basis for a year,
25 then they would accept my investment into the

R. S. Sciolino, for Defendant, Direct.

1 corporation.

2 Q. During that year what was your position?

3 A. I was made president, sir -- general manager.

4 Q. Who owned the stock of the corporation at that time?

5 A. It was 100% owned by Chrysler Corporation.

6 Q. And this is the building shown on the pictures which
7 we have put in evidence, is it not?

8 A. Yes, sir.

9 Q. And did you later -- strike that out. Did you have an
10 agreement whereby you were given rights to purchase
11 the stock of the corporation?

12 A. I had a right to purchase out of the profits of the cor-
13 poration, Main Chrysler-Plymouth, to reduce the common
14 stock of Chrysler, and we proceeded to do that, sir.

15 Q. When did you actually become -- when did you finally
16 acquire the controlling interest in the corporation?

17 A. In 1972, sir.

18 Q. Before or after this audit that Mr. Shea was talking
19 about?

20 A. After the audit, sir. When I acquired it?

21 Q. Yes.

22 A. I acquired the ownership prior to Mr. Shea's audit.

23 Q. So that as of July 1972 where did the stock lie, who
24 owned it?

25 A. Myself and Marine Midland.

1 Q. Now, you were the president of the corporation, were
2 you?

3 A. Yes, sir.

4 Q. As Mr. Shea has testified, your brother, William
5 Sciolino, was vice president, was he?

6 A. For a brief period, yes.

7 Q. Was he also a salesman?

8 A. A very good one, yes, sir.

9 Q. Was Mr. Robert Testa the secretary and treasurer and
10 comptroller?

11 A. Yes.

12 Q. Whose man was he?

13 A. He was initially placed within the dealership by the
14 board of directors which were then controlled by the
15 Chrysler Corporation.

16 Q. He continued on after you controlled the corporation,
17 is that right?

18 A. Yes, sir.

19 Q. What line of cars did you sell?

20 A. Chryslers and Plymouths, sir.

21 Q. New and used?

22 A. New and used.

23 Q. And did you also do selling yourself?

24 A. Quite often.

25 Q. Quite often. We can't see the interior of that showroom

R. S. Sciolino, for Defendant, Direct.

1 very well from the pictures. Describe the interior
2 as you go in, what offices there are and about where
3 they are located?

4 A. Well, at that time we had salesmen's offices to the
5 north end of the showroom, there were three of them,
6 and we had two salesmen's offices on the east side
7 toward the south of the showroom, we had a general
8 office, a sales manager's office and my office, sir,
9 and they were all on the east wall.

10 Q. By the way, have you ever been convicted of a crime in
11 your life?

12 A. No, sir.

13 Q. Did you have an agreement with Chrysler Corporation, a
14 personal agreement?

15 A. Yes, sir.

16 Q. And did you have a copy of it in your possession in the
17 summer of 1972?

18 A. Yes, sir.

19 Q. Tell us what this ASR meant that I discussed with Mr.
20 Shea?

21 A. Sir, this was a procedure that Chrysler Corporation
22 would initiate on automobile dealerships where they had
23 controlling interest, where the bulk of the money was
24 Chrysler's. They would on periodic calendar years --
25 in one year periodically, come in with an ASR team,

1 which is an Accounts System Review team. They would
2 check the authenticity of the books, making sure that
3 all taxes, wages and everything was being complied with
4 as a corporation should. I guess the biggest risk was
5 theirs.

6 Q. In other words, you had to keep those records for Chrys-
7 ler?

8 A. Very thoroughly, sir.

9 Q. Had your corporation been audited before this summer
10 of 1972?

11 A. No, sir. I kind of mentioned that to Mr. Shea.

12 Q. It had not?

13 A. No.

14 Q. Did Mr. Shea come there sometime late in July and start
15 the audit of your affairs?

16 A. In July, approximately the first week or so, two weeks.

17 Q. Did he demand your personal tax returns for 1970, 1971,
18 as well as the corporate returns?

19 A. As his audit continued, near the end of August he asked
20 me for my copies of my returns for the same years.

21 Q. Did you give them to him?

22 A. Yes, sir.

23 Q. Of course, he had the corporate returns?

24 A. Yes.

25 Q. He had access to all your sales records?

- 1 A. He had access to the whole dealership, sir.
- 2 Q. Did you give him an office and a desk to work at?
- 3 A. Yes, sir.
- 4 Q. Was it approximately as he described it on the sales-
- 5 room floor?
- 6 A. Yes, approximately eight by ten, sir.
- 7 Q. Who had it been used by up to that time?
- 8 A. Two salesmen.
- 9 Q. They had to work out of other offices while he was work-
- 10 ing in that one?
- 11 A. Yes.
- 12 Q. How many salesmen did you have there?
- 13 A. Eight or nine.
- 14 Q. How many other personnel in the agency?
- 15 A. Total employment at the agency at that time was between
- 16 38 and 41.
- 17 Q. And those included -- just categories, I don't care how
- 18 many?
- 19 A. Mechanics, two lot boys, parts, sales, service, office
- 20 personnel.
- 21 Q. And did there come a time when Mr. Shea demanded your
- 22 personal agreement with Chrysler?
- 23 A. Yes, sir.
- 24 Q. Did you give it to him or not at that time?
- 25 A. No.

R. S. Sciolino, for Defendant, Direct.

1 Q. Why not? What did you tell him about it?

2 A. I just said I wanted to check. I called Mr. Cooper,
3 who was our corporate attorney. I said there were some
4 things I had to explain to him, and I explained to Mr.
5 Cooper about the pending suits against Chrysler Cor-
6 poration with this kind of agreement with dealers, and
7 he asked if it was a contract between myself and Chrys-
8 ler, and I said it was, and he said, "Well, you shouldn't
9 give out --

10 Q. Who are you quoting?

11 A. Mr. Cooper, our attorney. He said, "You shouldn't give
12 out a contract unless both parties say it's okay," and
13 that was about it. Then I repeated that to Mr. Shea.

14 Q. Did you tell him anything else, did you suggest any
15 alternate procedure?

16 A. Yes, sir. I gave -- well, Mr. Shea was very persistent
17 on seeing that agreement, and I would tell Mr. Shea the
18 same objections, causing myself embarrassment to the
19 corporation, and I had been advised again by Mr. Cooper
20 if this was so important that Shea can take you off the
21 hook by getting a subpoena from the IRS, I believe, and
22 if he presented this to you, you know, Chrysler couldn't
23 jump down my throat.

24 Q. Did you tell Mr. Shea that?

25 A. Many times.

R. S. Sciolino, for Defendant, Direct.

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1 Q. Did he ever serve you with such a subpoena or summons?

2 A. No, sir.

3 Q. Now, tell us who your landlord was, that is, who Main
4 Chrysler-Plymouth's landlord was?

5 A. I sent our checks to Chrysler Realty for the month's
6 rent.

7 Q. Chrysler Realty was your landlord?

8 A. Yes.

9 Q. Was that a subsidiary of Chrysler Motor Corporation?

10 A. Yes, sir.

11 Q. To your knowledge, did Chrysler Realty Corporation
12 lease the entire premises from some individual owner
13 who owned the whole property?

14 A. Yes, sir.

15 Q. Was there any talks with Mr. Shea from time to time about
16 it being a Delaware corporation?

17 A. Yes, sir.

18 Q. Tell us briefly what that was about?

19 A. When I was explaining the agreement with Chrysler,
20 Mr. Shea wanted to know why it was formed in Delaware,
21 and I told Mr. Shea I didn't have the slightest idea
22 because I didn't form the corporation, and he seemed
23 to question that, sir, very, very strongly, about why
24 the corporation was formed in Delaware and what I was
25 trying to -- or what somebody -- why it was formed

1 there and not New York State for some reason. I said
2 I didn't have a satisfactory answer because I acquired
3 a corporation already in existence.

4 Q. You told him Chrysler formed it?

5 A. Yes, sir.

6 Q. Now, did you tell him who your accountants were?

7 A. Yes, sir, I told him Lumsden, McCormick & Adams, again
8 something we agreed to keep, they were Chrysler's ac-
9 countants.

10 Q. Who in that firm did you work with?

11 A. Mr. Steigmeir.

12 Q. You told him who your attorney was, Kenneth Cooper?

13 A. Yes, sir.

14 Q. Did he actually talk to Mr. Cooper on the phone on one
15 or more occasions?

16 A. Yes.

17 Q. About various matters to do with the audit?

18 A. Yes, sir.

19 Q. First of all, I would like to discuss this matter of
20 Mr. Shea's claim that you told him on one occasion
21 that you were investigating him. He said it happened
22 late in August, I think he said about August 23. What
23 is your recollection as to when it took place?

24 A. I believe it was in the latter part of July, Mr.
25 McDonough.

1 Q. Tell us how it came about?

2 A. I had been in contact with Lumsden, McCormick & Adams;
3 Mr. Steigmeir, and with our attorneys, and Mr. Steigmeir
4 said this looked like it was a --

5 MR. STEWART: I object, your Honor.

6 THE COURT: Will you read it back, please?

7 (Thereupon the last question and answer
8 was read by reporter.)

9 BY MR. McDONOUGH:

10 Q. You are not allowed to tell your conversations with
11 Mr. Steigmeir. After you had talked to Mr. Steigmeir
12 and your attorney, Mr. Cooper, did you later have a
13 conversation with Mr. Shea?

14 A. Yes.

15 Q. Would you please tell us what your conversations were
16 with Mr. Shea on that subject?

17 A. I asked him if this was the normal way of an audit, and
18 Mr. Shea said, "Yes, it's a routine audit of the dealer-
19 ship," and there wasn't no point of investigation of
20 him at that point.

21 Q. Was there a time when you put up to him the question
22 that he was one of the three top men or something of
23 that sort?

24 A. Yes, that was later.

25 Q. What happened on that occasion?

1 A. Mr. Testa, our comptroller, came to me one day and
2 said --

3 MR. STEWART: Objection.

4 THE COURT: Sustained. Strike it.

5 BY MR. McDONOUGH:

6 Q. Mr. Shea wasn't there, I assume?

7 A. When I talked to Mr. Testa, no, sir.

8 Q. Following your talk with Mr. Testa, did you have
9 another talk with Mr. Shea?

10 A. Yes, sir.

11 Q. Tell us what your talk with Mr. Shea was?

12 A. I said I understood that he was one of the top agents
13 in the department, and it seemed like more than a rou-
14 tine audit, and I said I would like to see his identi-
15 fication one more time. Mr. Shea then showed me his
16 identification. I then called up Mr. Cooper, our attor-
17 ney, and Mr. Cooper -- after my talking to him, Mr.
18 Cooper said, "I want to speak --

19 MR. O'KEEFE: Objection, your Honor.

20 THE COURT: Sustained.

21 BY MR. McDONOUGH:

22 Q. Did you put Mr. Shea on the phone with Mr. Cooper?

23 A. Yes.

24 Q. Did Mr. Shea talk with Mr. Cooper?

25 A. Yes.

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1 Q. Was it about the extent of his authority, and so on?

2 A. Yes, sir.

3 Q. All right. Now, with respect to your agreement with
4 the Chrysler Company, did you ever have a talk with
5 Mr. Shea wherein the question or the subject of the
6 Chrysler new car show at Reno, Nevada came up?

7 A. Yes.

8 Q. Would you please tell us about when that occurred and
9 what talk you had with Mr. Shea on that point?

10 A. Again, the last week -- the first week -- the last week
11 of July 1972, the first week of August 1972. I men-
12 tioned to him a few times that I would be leaving, on
13 the occasions that Mr. Shea would bring up that he
14 wanted to see my agreement with the Chrysler Corporation,
15 and I again told him repeatedly, "Look, I'll be going
16 to a new car showing, there'll be some corporate execu-
17 tives there, and I'll ask them the situation, and if
18 they agree to let you see it, I'll give it to you."

19 Q. What happened as far as Reno is concerned, did you go
20 there?

21 A. Yes. I believe we left on the 10th and returned on
22 the 13th, and --

23 Q. What month?

24 A. August.

25 Q. What happened while you were out there, did you talk to --

1 A. I explained --

2 Q. -- some of the higher authorities in Chrysler?

3 A. I explained I was under an IRS audit, they had re-
4 requested to see the agreement papers from Chrysler.
5 They said they didn't see any harm to it if I didn't,
6 and when I returned I -- we looked around maybe a week
7 or so, we then gave the papers to Mr. Shea.

8 Q. In other words, this is your agreement with Chrysler
9 Corporation which he had been continually asking for?

10 A. Yes.

11 Q. You did give it to him once you got Chrysler's okay?

12 A. Yes, sir.

13 Q. Let's get down to August 7, 1972, the picture taking
14 episode. Before that time had you had any difficulty
15 or dealings with Chrysler about the condition of your
16 salesroom and premises?

17 A. Many, many discussions, and many points of dispute
18 about the showroom and the walls and the roof of the
19 showroom, sir.

20 Q. All right. What was wrong with them?

21 A. It was leaking and cracking badly.

22 Q. How about this office where Mr. Shea used to work, was
23 anything noticeably wrong in the ceiling or the walls
24 of that --

25 A. There was --

1 Q. -- office?

2 A. Yes, sir. In the northwest corner there was a crack
3 in the wall from the top coming down to within three-
4 quarters of the length of the office that Mr. Shea
5 was in, and a large water-stained leak maybe four feet
6 to the left of that, sir.

7 THE COURT: How long had it been there?

8 THE WITNESS: They were reoccurring, your Honor.

9 THE COURT: How long had it been there?

10 THE WITNESS: Maybe a month at that time, sir.

11 BY MR. McDONOUGH:

12 Q. Now, did you have a Polaroid camera at the agency?

13 A. Yes, we had a Polaroid camera at the agency.

14 Q. What would you ordinarily use it for?

15 A. Taking photographs of accidents, when customers would
16 bring in their cars for their insurance companies.

17 Q. And did you use it on this day, if it was the 7th -- do
18 you remember the exact day?

19 A. No, sir.

20 Q. Tell us what you did that morning with the camera?

21 A. I came in and someone pointed out that we were getting
22 ready for the new car showing, and we were going to
23 paint the walls and fix them again, and because of the
24 problem with Chrysler and the landlord, I decided I
25 had better take pictures before we fixed it up again.

1 Q. Did you?

2 A. Yes, sir.

3 Q. About how many pictures did you take that morning?

4 A. Either four or five.

5 Q. Were they in various parts of the showroom?

6 A. Yes, sir. I started on the south end of the showroom,
7 and in the middle of the showroom there were two bad
8 ones, and then finished up on the north end of the
9 showroom, sir.

10 Q. Did you eventually take a picture in the vicinity of
11 Mr. Shea?

12 A. Yes, sir.

13 Q. Tell us about it?

14 A. I just kind of walked up and I didn't pay any attention
15 to Mr. Shea being in the office, I just kind of like
16 clicked --

17 Q. What was your purpose in taking the picture?

18 A. I wanted to get a picture of the crack.

19 Q. Was Mr. Shea in the picture?

20 A. About this much of him.

21 Q. All right. What happened after you snapped the shot?

22 A. It startled Mr. Shea.

23 Q. And what did he say?

24 A. "What are you doing?" I said, "I took your picture."

25 THE COURT: Did you say anything to him before you

1 took the picture?

2 THE WITNESS: No, sir.

3 BY MR. McDONOUGH:

4 Q. Well, what happened then?

5 A. You know, he said, "Why did you take my picture?" I
6 said, "For posterity," and I continued --

7 Q. Were you kidding when you said that?

8 A. Yes, sir.

9 Q. Did you intend this as any threat or impairment or
10 intervention with his duties as an auditor?

11 A. No.

12 MR. STEWART: Your Honor, if I can't have that kind of
13 evidence, I object to him having --

14 THE COURT: If you have some objection --

15 MR. STEWART: Yes, sir.

16 THE COURT: -- if so, make it in terms of the rule of
17 evidence, not a speech.

18 MR. STEWART: I object to it, sir.

19 THE COURT: Overruled.

20 BY MR. McDONOUGH:

21 Q. Then what happened after that?

22 A. I went --

23 Q. I'm talking about the picture?

24 A. He said something, and I said, "Posterity," and just
25 kind of shrugged it off, and moved over and took

1 another picture of the water leak, and then walked into
2 my office. They have a gook that you put on the Polar-
3 oid pictures. I was putting the gook on the pictures.
4 I sat down in my office, and it kind of struck me that,
5 you know, I was a little curt with Mr. Shea.

6 Q. What did you do then?

7 A. I had taken some of these Librax pills, I was upset
8 about the showroom, and I walked out and apologized to
9 Mr. Shea, told him I wasn't taking his picture, and
10 I apologized for startling him.

11 Q. Did anything else happen with respect to the picture?

12 A. He said, "You had no right to take my picture." I
13 said, "Mr. Shea, I apologize. I wasn't taking your
14 picture, you were sitting in the office of the wall
15 I was taking a picture of."

16 THE COURT: Was that a part of the showroom?

17 THE WITNESS: Yes, sir.

18 THE COURT: The office?

19 THE WITNESS: Yes.

20 THE COURT: You didn't show any cars in there, did you?

21 THE WITNESS: No, sir.

22 THE COURT: When did Chrysler first complain about the
23 condition of your showroom?

24 THE WITNESS: Semi-annually, sir.

25 THE COURT: When was the first time they complained?

R. S. Sciolino, for Defendant, Direct.

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- 1 THE WITNESS: 1970.
- 2 THE COURT: When in 1970?
- 3 THE WITNESS: I don't have the exact date.
- 4 THE COURT: To your best recollection?
- 5 THE WITNESS: I would say in the summer of 1970.
- 6 THE COURT: All right.
- 7 THE WITNESS: They have facility reviews.
- 8 THE COURT: Did you ever take pictures before?
- 9 THE WITNESS: Many times, sir.
- 10 THE COURT: How many?
- 11 THE WITNESS: I would say it's got to be 30 or 40 pictures.
- 12 BY MR. McDONOUGH:
- 13 Q. Did you thereafter have litigation with your landlord
- 14 with respect to these defects in the premises?
- 15 A. We are still in litigation with them, sir.
- 16 Q. Now, what happened next -- strike that out, please.
- 17 Mr. Shea says that the very next day this gun box epi-
- 18 sode took place, do you remember whether it was the
- 19 next day?
- 20 A. No, sir.
- 21 Q. You are not prepared to say as to the exact date?
- 22 A. No, sir.
- 23 Q. Was it soon thereafter?
- 24 A. Yes.
- 25 Q. Now, please tell us what happened, where you were and

1 what happened that mornig right from the beginning,
2 if it was the morning?

3 A. Mr. Shea, as I came into the showroom, asked if he
4 could talk with me. I said, "Yes, let's go into my
5 office." We got into the office and Mr. Shea repeated
6 the question again, "I would like to have a copy -- or
7 like to see your report -- or contract with Chrysler."
8 I again told him that I wasn't going to show it to him,
9 that within the next few days I was going to Reno and
10 could give him an answer, and I went through all my
11 objections again. I said, "Mr. Shea, maybe you would
12 be interested in Accounting System Reviews?" He said,
13 "What are they?"

14 Q. You have described those to us earlier?

15 A. Yes, sir. He said, "Well, let me see them." I said,
16 "Okay." So I had them in my desk someplace and I have
17 two rather large, big drawers on my left --

18 Q. Before we get to that, where were you seated?

19 A. This is my desk, I was seated here.

20 Q. Where was Mr. Shea?

21 A. Right directly in front of me.

22 THE COURT: Across the desk?

23 THE WITNESS: Yes, sir.

24 MR. McDONOUGH: I was looking for the photographs.

25 MR. O'KEEFE: I have them.

1 BY MR. McDONOUGH:

2 Q. Was your desk in approximately the same position as is
3 shown in Defendant's Exhibit 2?

4 A. Exactly, sir.

5 Q. And was the chair where Mr. Shea sat roughly where he
6 has marked it?

7 A. Yes, sir.

8 Q. Was that same credenza back of your desk at that time?

9 A. Yes, sir.

10 Q. Were all of the plaques and pictures on the walls now
11 exactly the same then or were they different?

12 A. Additions, some changes.

13 Q. But the position of the two pieces of furniture is
14 exactly the same, is it?

15 A. Yes.

16 Q. Approximately the same?

17 A. Yes, sir.

18 Q. All right. Now, please tell us what you did when you
19 were sitting at the desk and Mr. Shea was sitting
20 across from you?

21 A. I looked for the folders with the ASR reports in them,
22 sir.

23 Q. Where did you look?

24 A. I have a lot of files in the left-hand drawer, which
25 is a very deep drawer. I pulled that out, kind of

1 leafed through it, it wasn't there, and I spun around,
2 also to my left, there are some drawers in the credenza
3 on the left-hand side, it wasn't there, and then I came
4 over to the right side of my desk, sir, top drawer,
5 which is about this big, it wasn't in there, second
6 drawer, bottom drawer. As I thumbed through I noticed
7 on the bottom was a folder that stated ASR.

8 Q. What, if anything, was laying on top of the ASR file?

9 A. Gun box, some papers.

10 Q. What did you do with them?

11 A. May I answer? I kind of like pushed over this way,
12 put my hand into the paraphenalia, and placed them on
13 the credenza to the back of me, so I could -- because
14 there was a lot of junk, you know, to get to the ASR.

15 Q. Did you place these other papers and the gun box on
16 your desk or on the credenza behind you?

17 A. To the right of me and behind me.

18 Q. On the credenza?

19 A. Yes, sir.

20 Q. Did you then take out the ASR file?

21 A. Yes, sir.

22 Q. What did you do with it?

23 A. I handed it to Mr. Shea.

24 Q. What did he do with it?

25 A. He took it in his hands, looked at it, said, "It's no

1 use to me," and handed it back to me.

2 Q. What did you do?

3 A. I put everything back in the drawer.

4 Q. By "everything" what do you mean?

5 A. Put the ASR in, took all the stuff off and put it in
6 the drawer.

7 Q. Did you put in the gun box?

8 A. Yes, shut the drawer.

9 Q. At any time when you removed that gun box did you in-
10 tend that as a threat or intimidation or impeding of
11 Mr. Shea in the performance of his duties?

12 A. No, sir.

13 Q. Was there any gun in that box?

14 A. No, sir.

15 Q. What was in it?

16 A. I believe a cleaning rod and directions how to clean
17 the revolver.

18 THE COURT: Was there a legend on the box?

19 THE WITNESS: Yes.

20 THE COURT: What did it say?

21 THE WITNESS: Smith & Wesson.

22 MR. McDONOUGH: We have a similar box.

23 THE WITNESS: Very clearly.

24 MR. McDONOUGH: Would you mark this for identification,
25 please?

R. S. Sciolino, for Defendant, Direct.

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(Thereupon box referred to was marked
Defendant's Exhibit 4 for identification.)

MR. STEWART: May I see that, Mr. McDonough?

MR. McDONOUGH: Yes.

BY MR. McDONOUGH:

Q. Is this box the box that was in your desk that day?

A. No, sir.

Q. Is it identical in every respect to the box that was
in your desk that day?

A. Yes, sir.

Q. What is in this box?

A. It's a cleaning rod, sir.

Q. For the gun?

A. Yes, sir.

Q. And some directions?

A. Yes, sir.

Q. Were there similar articles in the box which was in
your desk?

A. Yes.

Q. It was a box identical in size and markings to that
that you took out of your desk with the other papers
that day?

A. Yes, sir.

MR. McDONOUGH: I will offer it in evidence, your Honor.

MR. STEWART: No objection.

1 THE COURT: Received.

2 MR. McDONOUGH: Including the contents.

3 (Thereupon Defendant's Exhibit 4, previously
4 marked for identification, was received
5 and marked in evidence.)

6 THE COURT: May I see it?

7 BY MR. McDONOUGH:

8 Q. After you put the papers and the gun box back in the
9 desk, what happened next?

10 A. Mr. Shea still asked for the agreement with Chrysler.
11 I told him I wasn't going to give it to him at that
12 time. Many times when Mr. Shea would get on this, I
13 would change the subject.

14 Q. What did you do this time?

15 A. Changed the subject.

16 Q. What did you talk about?

17 A. I believe we started on the cost of collecting taxes,
18 really, and of war and how I couldn't make -- I can't
19 remember exactly -- I couldn't make as much in one day
20 as a fighter plane dropped in Vietnam in one day. I
21 had just read an interesting article along this point
22 of man's technology has, you know, surpassed the atti-
23 tude of like coming out of a jungle, to a point of --
24 I guess describing the yardstick. It was a philosophi-
25 cal type discussion. Mr. Shea participated.

R. S. Sciolino, for Defendant, Direct.

1 Q. Did Mr. Shea have anything to say during this?

2 A. Yes, he agreed with me.

3 Q. Did you intend these comments as any threat, intima-
4 tion, threat of force or attempt to impair or impede
5 Mr. Shea in the performance of his duties?

6 A. No, sir.

7 Q. Did Mr. Shea express any resentment or fear to you at
8 the fact you had taken a gun box out and put it on the
9 credenza or with respect to your remarks about man's
10 progress, and so forth?

11 A. No, sir.

12 Q. We have covered the episode about the investigation that
13 Mr. Shea said took place on August 23, your recollection
14 is that it took place earlier. While you were giving
15 this discourse or talking with Mr. Shea about the prog-
16 ress of man's civilization, and so forth, did you ever
17 purposely look or glance at that box?

18 A. When I was talking about that, Mr. McDonough, everything
19 was back in my desk drawer.

20 Q. The box was back in the desk drawer?

21 A. Yes, sir.

22 MR. McDONOUGH: I believe that is all, Mr. Sciolino. Your
23 witness.

24 MR. STEWART: Would you mark this, please?

25 (Thereupon item referred to was marked

Government's Exhibit 3 for identification.)

CROSS-EXAMINATION BY MR. STEWART:

Q. Mr. Sciolino, I show you an item which has been marked Government's Exhibit 3 for identification purposes, does that look like the credentials which Mr. Shea showed you and which you mentioned in your testimony?

A. Yes, sir.

MR. STEWART: I would move these be admitted in evidence. They speak for themselves.

MR. McDONOUGH: I object to it, if your Honor please. It is immaterial. We don't question Mr. Shea's credentials as an IRS agent.

THE COURT: Do you wish to take the concession or do you want to offer it?

MR. STEWART: I will take the concession, your Honor.

THE COURT: At the times mentioned in the indictment?

MR. McDONOUGH: Yes, sure

MR. STEWART: Fine, thank you.

BY MR. STEWART:

Q. Mr. Sciolino, in August of 1972, specifically on August 8, 1972, did you own a .38 caliber revolver, Smith & Wesson?

A. Yes, sir.

Q. And during the morning hours of that particular day, August 7 -- August 8, I'm sorry -- where was that

1 revolver?

2 A. In my desk, sir.

3 Q. What part of your desk?

4 A. Left-hand drawer, sir.

5 Q. Was it in a holster or in a box or just loose?

6 A. It was in a pistol -- belt holster, sir.

7 Q. A belt holster?

8 A. Yes, sir.

9 Q. Not a shoulder holster?

10 A. No, sir.

11 Q. Did you at that time own a shoulder holster?

12 A. I can't remember, sir.

13 Q. Did you always keep that particular gun in the desk
14 drawer?

15 A. Yes, sir.

16 Q. And was there anyplace else that you kept that particu-
17 lar weapon?

18 A. No, sir.

19 Q. Did you ever wear the weapon?

20 A. Only when I came, left or went to lunch, sir.

21 Q. Well, that would have been every day then?

22 A. Yes, sir.

23 Q. And you wore it in a holster that attached to your belt?

24 A. It has a clipon. It's a clipon kind.

25 Q. It attaches to the belt?

- 1 A. Yes, slips inside of your pants.
- 2 Q. You wore it to work, is that right?
- 3 A. Yes, sir.
- 4 Q. Then when you would go out for lunch you would put it
- 5 on?
- 6 A. When I went to lunch, yes.
- 7 Q. And remove it again when you came back?
- 8 A. Yes, sir.
- 9 Q. And put it in the desk?
- 10 A. Yes.
- 11 Q. When you left for the evening you would put the weapon
- 12 or the holster back on and leave with the weapon, is
- 13 that right?
- 14 A. Yes, sir.
- 15 Q. Now, aside from the question of the Chrysler agreement,
- 16 did Mr. Shea ask you for any other documents which you
- 17 either did not wish to provide or for any reason did
- 18 not provide?
- 19 A. I believe I provided everything that Mr. Shea asked
- 20 for, sir.
- 21 Q. And would you characterize your relationship with Mr.
- 22 Shea as being generally amicable?
- 23 A. If you mean a plain business basis, yes, sir.
- 24 Q. All right. Did you at any time say to him that you
- 25 felt that the audit was being conducted for some sort

1 of an ulterior purpose?

2 A. Only to the length of it, sir.

3 Q. How long did this particular audit last?

4 A. July, August and September, sir.

5 Q. Well now, in July, how many times did you see Mr. Shea
6 in July?

7 A. Most of July, sir.

8 Q. And how many times did you see him in September?

9 A. I believe he was there for the first two weeks, sir.

10 Q. You're positive about that?

11 A. To the best of my recollection, sir.

12 Q. Could it be that he was only there during the month of
13 August?

14 A. No, sir.

15 Q. Now, this was the first time that your corporation had
16 been audited, is that correct, audited by the Internal
17 Revenue Service?

18 A. To my knowledge, yes, sir.

19 Q. You had just taken over control of the corporation, had
20 you not?

21 A. Three months previous to the audit, sir.

22 Q. That would be June?

23 A. No, I'm sorry, six months, March, sir. I didn't get
24 the papers until June.

25 Q. When Mr. Shea asked you for your own personal income

1 tax returns, did he explain to you the reason he was
2 asking for that?

3 A. Yes, sir.

4 Q. Was there anything at that time that gave you any
5 trouble about that, did you understand why he was
6 asking?

7 A. I understood why he was asking, sir.

8 Q. Nothing unusual about that, was there?

9 A. No, sir.

10 Q. You gave him the papers, did you not?

11 A. Eventually, when I got them together I gave them to
12 him, sir.

13 Q. That was just for the officers, wasn't it?

14 A. Yes, sir.

15 Q. All right. Now, in the course of the audit did he make
16 any other demands or requests that gave you pause or
17 any difficulty?

18 A. Not that weren't straightened out, sir.

19 Q. He didn't act in an unreasonable manner, did he?

20 A. It was my first audit. I don't know -- I don't know
21 how to answer this. By unreasonable to me, many of
22 the things were unreasonable, but maybe to him they
23 were not.

24 Q. All right. Can you give me an example of something
25 that you thought at the time was unreasonable?

- 1 A. He asked me where I got all the money to buy all the
2 new cars from Chrysler.
- 3 Q. What did you tell him?
- 4 A. From the bank.
- 5 Q. What bank did you tell him?
- 6 A. Marine Midland.
- 7 Q. Now, did he subsequently go and verify that you had
8 gotten the money from Marine Midland?
- 9 A. He wanted to know why all the invoices was saying
10 Chrysler Credit.
- 11 Q. Why were they?
- 12 A. There was a changeover from Chrysler Financial --
13 Chrysler Credit to Marine Midland when I finished the
14 buying out from Chrysler Corporation, sir.
- 15 Q. Wouldn't that be a perfectly reasonable question under
16 the circumstances of a change in ownership?
- 17 A. In retrospect, yes, sir.
- 18 Q. Didn't he explain to you the reason he asked the ques-
19 tion at that time?
- 20 A. No, sir.
- 21 Q. He did not?
- 22 A. No, sir.
- 23 Q. Are you positive?
- 24 A. Positive, sir.
- 25 Q. Now, you had just purchased 100% of the control of the

1 corporation, had you not?

2 A. Yes, sir.

3 Q. And what was the total purchase price that you paid
4 Chrysler Corporation?

5 A. In excess of \$130,000, sir.

6 Q. All right. Did he request information concerning
7 \$17,000 of that money?

8 A. Yes, sir.

9 Q. What did you tell him regarding the source of that
10 \$17,000?

11 A. That was my initial investment in 1970, sir.

12 Q. All right. Did he ask you where that money came from?

13 A. Yes, sir.

14 Q. Did you tell him?

15 A. Yes, sir.

16 Q. What did you tell him?

17 A. From savings, from loans, and a gift from a relative, sir.

18 Q. Now, that was very early into the audit that he asked
19 you that question, wasn't it?

20 A. I believe so.

21 Q. Did he explain to you at that time that the purpose of
22 his question was to find out the actual ownership of
23 the corporation?

24 A. Yes, sir.

25 Q. In other words, to verify what you had told him, that

1 you were the sole owner of the corporation?

2 A. Yes, sir.

3 Q. And did he subsequently come back to you and ask you a
4 question concerning verification of the \$17,000?

5 A. No, sir.

6 Q. He never asked you about that?

7 A. No. He brought up again how I got the money. I repeated
8 it to him.

9 Q. Did he ask you whether you had transferred the money
10 into an account or into a cashier's check?

11 A. I told him that approximately in 1970, in the summer
12 months, I was notified a little ahead of time by Chrysler,
13 I got all the money together, and I made another
14 loan to bring it up to what they needed. It wasn't
15 \$17,000 though, sir.

16 Q. The total was one hundred and some odd thousand dollars?

17 A. My initial part of it was \$15,000, sir.

18 Q. Was that a gift or was that your own money?

19 A. Part of it was a gift from a relative, a large part of
20 it was a loan, and the other part of it was my savings,
21 sir.

22 Q. Now, did you at any time complain to Revenue Agent Shea
23 about the fact that he was conducting an audit at all,
24 and more particularly about the fact that this audit
25 came on top of certain actions by the Treasury

1 Department?

2 A. No, sir. My only statement to Mr. Shea was that how
3 come the IRS is looking at me and Chrysler-Plymouth
4 when it's showing a profit, and for the previous five
5 or six years never went near it when it was showing
6 large losses.

7 Q. You never talked to him at all about an employee of
8 yours who had previous difficulties with the Treasury
9 Department?

10 A. Oh, in the very beginning, yes, sir.

11 Q. Just once?

12 A. Just once, sir.

13 Q. Not more than once?

14 A. No, sir.

15 Q. What did you tell him at that time?

16 A. I believe it was within the first day or two with Mr.
17 Shea in a conversation, and he asked me if I was famil-
18 iar with Internal Revenue, and I said, "To some extent,
19 and the Treasury Department." He said, "What do you
20 mean by Treasury?"

21 Q. What did you tell him?

22 A. I explained to him the situation.

23 Q. Didn't you tell him that you were angry at the Treasury
24 Department for seizing one of your vehicles, and you
25 didn't think much of him because he was part of the

1 Treasury Department?

2 A. No, sir.

3 Q. You never said that to him?

4 A. No, sir.

5 Q. You are positive of that?

6 A. Positive, sir.

7 Q. Now, are you in fact 100% owner of this corporation?

8 A. Myself and the stock that I borrowed against -- it's
9 all in my name, there is loans against it.

10 Q. All right. Are those loans with banking institutions?

11 A. Yes, sir.

12 Q. What are the banking institutions?

13 A. Marine Midland-Western.

14 Q. One banking institution?

15 A. Yes, sir.

16 Q. How many loans do you have?

17 A. Personal loans or corporation?

18 Q. Loans dealing with the corporation, the ownership of
19 the corporation?

20 A. One, sir.

21 Q. One loan?

22 A. Yes, sir.

23 Q. There are no loans from private individuals?

24 A. No, sir.

25 THE COURT: Were there back in August of 1972 when

1 the audit was going on?

2 THE WITNESS: No, sir.

3 BY MR. STEWART:

4 Q. Now, did you say to Revenue Agent Shea that he was one
5 of the top three men in his division in terms of
6 seniority and grade?

7 A. I asked him, sir.

8 Q. You asked him that?

9 A. Yes, sir.

10 Q. Now, you say that on August 7 in the afternoon when
11 the photograph was taken that you were taking photo-
12 graphs of water damage to the walls, is that correct?

13 A. Yes, sir.

14 Q. And you say that you stopped by this cubicle and took
15 a photograph of Mr. Shea?

16 A. I took a photograph of the wall, sir.

17 Q. All right, sir. Now, this particular cubicle, what is
18 it constructed of?

19 A. Four glass partitions.

20 Q. Well, they didn't have any water damage, did they?

21 A. The wall, the back wall -- I'm sorry, three glass par-
22 titions, sir, the fourth partition is the north wall
23 of the showroom.

24 Q. That would be to Mr. Shea's back, wouldn't it?

25 A. That would be to Mr. Shea's left, sir. I believe he

1 was sitting facing this way. That would be to his left.

2 Q. All right. That is the outer wall?

3 A. That is the inside, the showroom wall, sir.

4 Q. Where is the particular crack or spot that you were
5 concerned with at this time?

6 A. If you were to take this space here as the cubicle, and
7 about here, the crack, sir, came on an angle about
8 three-quarters of the way down the wall, running from
9 the window, so to speak, this way.

10 Q. All right. Where is the photograph of Mr. Shea, the
11 one you took that day?

12 A. I don't know, sir.

13 Q. When was the last time you saw it?

14 A. In 1972. I believe it was discarded, I usually clean
15 my desk at the end of every year.

16 Q. I thought you were engaged in litigation on this very
17 issue of the water damaged walls?

18 A. Yes.

19 Q. Didn't you need this photograph for that litigation?

20 A. The photograph didn't turn out well, sir.

21 Q. You said it showed part of Mr. Shea's head and body
22 and the wall.

23 A. It showed -- well, an image, sir. It was a little,
24 cheap Polaroid camera.

25 Q. You say at that time it was not your intention to take

1 a photograph of Mr. Shea?

2 A. No, sir.

3 Q. Then why is it, please, that you said to Mr. Shea,
4 according to his testimony, that you were taking this
5 for posterity, so you could show it around and say this
6 is the guy?

7 A. I didn't say that, sir.

8 MR. McDONOUGH: I object to it. All right, I will withdraw
9 the objection.

10 BY MR. STEWART:

11 Q. You heard his testimony here under oath?

12 A. Yes, sir.

13 Q. And he is incorrect when he testified that you said the
14 words "and say this is the guy."?

15 A. Yes, sir.

16 Q. That is false?

17 A. Yes, sir.

18 MR. McDONOUGH: Wait a minute, I object to that.

19 THE COURT: Yes. Leave it with the jury as to whether
20 it is true or false. Did you tell him
21 you were taking it for posterity?

22 THE WITNESS: Yes, sir.

23 BY MR. STEWART:

24 Q. Then you say that you went on and you took -- as you
25 started back to the office -- you took one more

1 photograph of another portion of the wall?

2 A. I moved to the left of Mr. Shea, where he was sitting,
3 and took a photograph of the upper left-hand corner
4 right next to the window.

5 Q. That was also a flash photograph?

6 A. Yes, sir.

7 Q. And how many photographs had you taken -- how many flash
8 photographs had you taken prior to the time that you
9 took Mr. Shea's photograph?

10 A. Three or four, sir.

11 Q. And in what proximity of time, that is, what span of
12 time had you taken those photographs prior to the time
13 that you took Mr. Shea's photograph?

14 A. A span of maybe five or ten minutes, sir.

15 Q. So that in the course of approximately six minutes,
16 give or take a bit, you took a minimum of some seven
17 flash photographs -- all right, sir, would you correct
18 me then?

19 MR. McDONOUGH: I object to that. He didn't say that, he
20 said four or five.

21 BY MR. STEWART:

22 Q. All right, five.

23 A. Four or five.

24 Q. Four or five flash photographs all within an area of
25 approximately how many feet of Mr. Shea?

1 MR. McDONOUGH: Wait a minute, I object to the form. He
2 didn't say that were all --

3 THE COURT: He is asking him the question.

4 BY MR. STEWART:

5 Q. You may answer.

6 A. I would say at least from here past the outside wall
7 of this courtroom, sir.

8 Q. All right. I believe the courtroom is about 59 feet
9 long, so it would be a little past that?

10 A. Yes, sir.

11 Q. All right. Now, I take it that you were moving from
12 one end of the showroom to the other, is that correct?

13 A. Yes, sir.

14 Q. And were the photographs spaced fairly evenly apart
15 or did they come in clusters?

16 A. Clusters, sir.

17 Q. All right. And let us -- well, again, taking this dis-
18 tance now from one end of the courtroom to the other,
19 where would Mr. Shea's cubicle be in terms of say the
20 jury box or the spectators' area?

21 A. Left-hand corner of the showroom -- of the courtroom,
22 sir.

23 Q. All the way at the end?

24 A. Yes, sir.

25 Q. And where would your office be, again assuming this

1 area here would be the main showroom now, and that is
2 the outer wall, this outer wall is your outer wall?

3 A. Approximately that middle door, sir.

4 Q. Behind me then on the other side of the showroom?

5 A. I don't understand.

6 Q. You said your office would be where that door is?

7 A. Yes, sir.

8 Q. His cubicle would be all the way over in that far corner?

9 A. Correct, sir.

10 Q. And where were all the splotches that you were photo-
11 graphing?

12 A. Using the same, the showroom window runs along this.

13 Q. That is our outer wall?

14 A. Right. They would all be showroom windows. I started
15 in the corner where there was a cluster of three or
16 four.

17 Q. Indicating now the wall to the jury's right?

18 A. Up in the corner, in the ceiling, sir.

19 Q. All right. You worked your way down past the jury box
20 toward the rear of the courtroom, is that right?

21 A. Yes, sir.

22 Q. And where were most of these splotches?

23 A. All up in the west side of the showroom, sir.

24 Q. Now, did you take all the photographs outside in the
25 area of the showroom?

1 A. Yes, sir.

2 Q. So would it be fair to say then that you moved from
3 approximately somewhere where you are right now, down
4 toward the end of the courtroom, walking along the jury
5 panel toward the cubicle in which Mr. Shea's office
6 was located?

7 A. Yes, sir.

8 Q. Taking photographs?

9 A. Yes, sir.

10 Q. Four or five?

11 A. Yes, sir.

12 Q. With a flash bulb?

13 A. No, sir.

14 Q. No flash bulb?

15 A. No, I didn't use a flash bulb until the last two, sir.

16 Q. Until you got to Mr. Shea?

17 A. No, not until I got to Mr. Shea. The proximity in the
18 afternoon of the west, with the sun coming in -- well,
19 the camera that I was using has a little knob on it, and
20 you can turn it, and it says yes, you can take a photo-
21 graph without a flash bulb. If you turn the knob and
22 it says -- the red light stays on, you have to place a
23 flash bulb in it.

24 Q. You are taking a picture of an outer wall, aren't you?

25 A. Our windows are very big, it lets in a lot of sun, sir.

R. S. Sciolino, for Defendant. Cross

1 I was shooting the initial pictures with the sun.

2 Q. With the sun coming in on your camera?

3 A. Yes, sir.

4 Q. Did you get good pictures that way?

5 A. Decent pictures.

6 Q. With the sun coming right into the lens of your camera?

7 A. I was shooting up, away from it. I'm not a photographer,
8 sir. They came out.

9 Q. Do you have any of those pictures?

10 A. I sent the pictures to Chrysler Realty.

11 Q. All of the pictures except the picture of the crack in
12 Mr. Shea's office, is that right?

13 A. No, and the crack on the left-hand side -- I don't know,
14 sir, I think there were two I didn't send that didn't
15 turn out right.

16 Q. One was the one of Mr. Shea?

17 A. Yes, sir.

18 Q. Which you took with a flash?

19 A. Yes, sir.

20 Q. By the way, do you lease automobiles?

21 A. Only in the very recent times, sir.

22 Q. Not at that time?

23 A. No, sir.

24 Q. Now, during -- from the spring of 1970 -- or December
25 of 1969 through the summer of 1971 you did not lease

1 any automobiles?

2 A. We had daily rentals available.

3 Q. Daily rentals?

4 A. Yes, sir.

5 Q. How many vehicles were you renting, do you remember,
6 during that period of time?

7 A. It fluctuated, sir.

8 Q. Could you give us any estimate?

9 MR. McDONOUGH: I object to this as immaterial.

10 THE COURT: Overruled.

11 THE WITNESS: At times we would have two -- two to four
12 in service at a time, sir.

13 BY MR. STEWART:

14 Q. And did you have one set of tags for each vehicle?

15 A. There was -- sometimes they were put on with dealer
16 plates, sir, and when we got everything organized we
17 then purchased Z-type plates, rental plates.

18 THE COURT: Did Mr. Shea ask you about that?

19 THE WITNESS: No, sir.

20 BY MR. STEWART:

21 Q. Did he go through your rentals at all?

22 A. I don't know, sir. He went through our Driver Education
23 cars.

24 Q. Did you ever object to him going through the list of
25 customers?

1 A. No, sir.

2 Q. You are positive that you never ever during the course
3 of that audit objected to him going through the list
4 of customers?

5 A. We would -- no, sir, the only statement that was made
6 to Mr. Shea was that we would hope that if he found
7 something that he would protect the dealership and ask --
8 give -- serve us with a subpoena so we would not be
9 caught in a third-party lawsuit, sir.

10 Q. Isn't it true that you objected to him taking down the
11 names of certain customers?

12 A. Not objecting to him, only we would ask if he were go-
13 ing to use anything he found within our corporation
14 that he would protect our corporation with a subpoena
15 or a summons from a third-party action.

16 Q. By the way, what is the name of the Chrysler official
17 who complained about the condition of the showroom
18 during the summer of 1970?

19 A. I believe there were two of them.

20 Q. Do you know the names of any of them?

21 A. Dave Aikens and, I believe, a Mr. O'Dell. It was more
22 in the form of what was called a dealership facility
23 type review as to the condition of the facility, plus
24 yearly they would send an engineer from Chrysler Cor-
25 poration -- Chrysler Realty, itself, by the name of

1 Mr. Lyman Crowell.

2 Q. You are quite positive that during the incident on
3 August 8, 1972, that you placed that gun box on the
4 little table behind the desk and not on the desk itself?

5 A. Yes, sir.

6 Q. Absolutely positive of that?

7 A. Absolutely, sir.

8 Q. You are positive that at the time that gun box was
9 out of the drawer and on the table behind the desk that
10 you did not at that time engage in a discussion with
11 Agent Shea in which you said to him, "I don't know what
12 I would do if I were cornered and I had no escape."?

13 A. I never said that, sir.

14 MR. STEWART: May I have just a moment, your Honor?

15 THE COURT: Yes.

16 BY MR. STEWART:

17 Q. Did you ever wear that gun in the showroom during
18 normal working hours?

19 A. Only if I was coming or going, sir.

20 Q. Only if you were coming and going?

21 A. Yes, sir.

22 MR. STEWART: I have no further questions.

23 MR. McDONOUGH: That is all. Thank you, Mr. Sciolino.

24 (Witness excused.)

25 MR. McDONOUGH: The defense rests, your Honor.

Discussion.

- 1 THE COURT: All right. The jury may take a short
2 recess.
3 (Thereupon the jury exited the courtroom
4 at 4:00 p.m.)
- 5 THE COURT: All right, Mr. McDonough.
- 6 MR. McDONOUGH: They haven't said if they have any rebut-
7 tal.
- 8 THE COURT: I think at this time you must renew your
9 motions.
- 10 MR. McDONOUGH: I was waiting for them to see if they have
11 any rebuttal. If the Court please, the
12 defendant moves to dismiss the indictment
13 on both the first and second count thereof
14 on all the grounds stated at the close of
15 the Government's case, and also move for
16 a directed judgment of acquittal on the
17 grounds that any other verdict now would
18 be contrary to the law, contrary to the
19 evidence, contrary to the weight of the
20 evidence.
- 21 THE COURT: Denied.
- 22 MR. STEWART: Excuse me, your Honor. We would like to
23 make a motion with respect to Defense
24 Exhibit 2. Your Honor, there is right in
25 the center of this photograph a photograph

Discussion.

1 showing the defendant with a player who I
2 understand is one O. J. Simpson. It ap-
3 pears this photograph is not on the wall,
4 mounted on the wall or anything, it is
5 simply propped up in the center of the
6 photograph, and I feel that this could be
7 a bit prejudicial and inflammatory, pre-
8 judicial to the Government, and I would
9 like that part of this photograph blotted
10 out unless there is testimony that this
11 particular picture of O. J. Simpson was
12 in that location in 1972.

13 MR. McDONOUGH: If the Court please, as your Honor can see,
14 the walls and the credenza are full of
15 football pictures, there is a big Buffalo
16 Bill plaque on the wall, and I submit the
17 mere fact that O. J. Simpson may appear
18 in one of the pictures back there is no
19 prejudice to the Government.

20 THE COURT: Of course not, denied. Will there be any
21 rebuttal?

22 MR. STEWART: No, your Honor.

23 THE COURT: All right.

24 MR. McDONOUGH: Might I ask your Honor's plans as far as
25 the submission of the case to the jury?

1 I have to be in Albany in the Court of
2 Appeals tomorrow.

3 THE COURT: Well, I would like to submit it to them.
4 What time to you have to be in the Court
5 of Appeals?

6 MR. McDONOUGH: I have to be there at two o'clock, but I
7 have to get a morning plane about nine-
8 thirty, the only plane I can get. I would
9 also like to review my trial notes here.
10 While it hasn't been a long case, it went
11 bing, bing, bing, and I would like a little
12 time to review my notes. Would it be ask-
13 ing too much to sum up and charge Thursday
14 morning?

15 THE COURT: I think it would rather interrupt the
16 momentum of the trial. Could you have
17 someone else sit in while I charge tomor-
18 row?

19 MR. McDONOUGH: I don't think --

20 THE COURT: We will do it tonight. Okay.

21 (Thereupon the Court was in recess at
22 4:05 p.m.)

23 (Proceedings resumed, pursuant to recess,
24 commencing at 4:10 p.m.)

25 (Defendant present, counsel present, jury

absent)

1
2 THE COURT:

Mr. Stewart, I will give the substance of
Number 1, but not in the form that you
have asked. I have not decided what I am
going to do with Number 2. I haven't had
much chance to study them. I will charge
in the language of Bamberger, that the
Government has the burden of proving a
present ability to inflict bodily harm or
serious injury, and that intimidation con-
stitutes instilling fear of immediate
bodily harm along those lines. Exactly
what I will charge I don't know, but it
will not be as you have phrased it here at
all on assault.

(Thereupon the jury entered the courtroom
at 4:12 p.m.)

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18 THE COURT:

The parties have rested, and the evidence
is closed. We are unable to meet tomorrow
due to the fact that one of the lawyers
must be in another court out of town, and
we will resume Thursday morning at nine-
thirty. Don't talk about this case, don't
let anybody talk about it with you. Wait
until you have heard the closing arguments

1 of the lawyers and the Court's instructions
2 on the law, when you will have all the
3 opportunity in the world to discuss this
4 among yourselves. Be particularly careful
5 now, don't even discuss it at home. Don't
6 read anything about it or listen to any-
7 thing about it. Nine-thirty Thursday morn-
8 ing. Good night.

9 (Thereupon the jury exited the courtroom
10 at 4:15 p.m.)

11 THE COURT: Mr. McDonough, have you had an opportunity
12 to look at the Government's requests?

13 MR. McDONOUGH: Not carefully, your Honor.

14 THE COURT: Well, if you want rulings before you sum
15 up, I see no alternative than to stay here
16 and do it now.

17 MR. STEWART: No, sir, I won't insist on that. I thought
18 your Honor had an opportunity to read them,
19 but it is not that necessary. I am certain-
20 ly not pressing the point.

21 THE COURT: I think you should know what I am going to
22 charge and direct your summation in that
23 vein. I think perhaps the quick way to do
24 it would be for you to look over the re-
25 quests, Mr. McDonough.

- 1 MR. McDONOUGH: Could I advise the Court and Mr. Stewart
2 in writing?
- 3 THE COURT: I want to do it now.
- 4 MR. McDONOUGH: May I have a few minutes?
- 5 THE COURT: Sure, sit down and do it now. Let me know
6 which ones you object to, otherwise I will
7 give the substance of what he requests.
- 8 MR. McDONOUGH: Taking them seriatim, your Honor, Number 2,
9 I would object to the repeated and repeated
10 quotes from cases here. I would object to
11 all of it in the language requested. I
12 would have no objection to a charge in the
13 language of Bamberger. I object to the
14 lengthy request --
- 15 THE COURT: Obviously I wouldn't do that, that is my
16 quarrel with it too, it is repetitive and
17 confusing, gobbledygook. I will try to
18 state it in the English language along
19 the lines of Bamberger.
- 20 MR. McDONOUGH: I would object to Instruction 3, your Honor,
21 particularly the last paragraph. I would
22 have no objection to the first two para-
23 graphs.
- 24 THE COURT: Yes, I will not define intimidation in that
25 language.

Discussion.

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1 MR. McDONOUGH: I object to the lengthy and repeated item-
2 ized requests for charges under 4. I would
3 have no objection down to --

4 THE COURT: I'm sorry, I didn't hear you.

5 MR. McDONOUGH: Request Number 4, I would have no objec-
6 tion to the first page, but when the Govern-
7 ment requests this itemized statement of
8 what the Government had to prove -- no, I
9 will withdraw that, I have no objection to
10 Request 4 down to the end of the paragraph
11 designated 3 on Page 2 of Request 4, but
12 I object to the inclusion of the word
13 endeavor --

14 THE COURT: And evil purpose. Yes, I wouldn't give
15 that.

16 MR. McDONOUGH: And the word, the definition of intimidat-
17 ion. I would have no objection to the
18 act corruptly done in the last paragraph.

19 THE COURT: I think that word intimidate comes close
20 to what I would charge. Intimidate means
21 to instill fear of bodily harm.

22 MR. McDONOUGH: I would have no objection to the definition
23 of acts corruptly done or what the word
24 threat means in Request Number 4.

25 THE COURT: I don't know what corruptly means in here

1 in the context of this case. I don't
2 think it has any bearing on the case, there
3 isn't any corruption here. I don't see
4 its bearing. Can you enlighten me, Mr.
5 Stewart?

6 MR. STEWART: Your Honor, the statute includes --

7 THE COURT: I know it does, it also includes whoever
8 impedes.

9 MR. STEWART: Your Honor, according to the jury instruc-
10 tions --

11 THE COURT: What does the statute say? I don't care
12 about the jury instructions, some other
13 judge's charge I don't usually accept any-
14 way.

15 MR. STEWART: The statute says that -- uses the word
16 corruptly.

17 THE COURT: I know it does. How does it bear on this
18 case?

19 MR. STEWART: Well --

20 THE COURT: I can read the statute.

21 MR. STEWART: We are saying that the acts which were
22 done, the intimidation of the agent, were
23 done voluntarily and intentionally, with
24 the bad purpose of accomplishing an unlaw-
25 ful end or result.

- 1 THE COURT: You are talking about Count 2?
- 2 MR. STEWART: Yes, sir, only Count 2.
- 3 THE COURT: It is or, whoever corruptly or by threat
4 of force.
- 5 MR. McDONOUGH: The indictment alleges it is by threats
6 of force.
- 7 THE COURT: That was my recollection of it. Isn't
8 that what the indictment alleges?
- 9 MR. STEWART: Yes, sir.
- 10 THE COURT: You don't allege corruptly, do you?
- 11 MR. STEWART: No, sir.
- 12 THE COURT: Why do you want me to charge it, to commit
13 an error that would be reversible? I'm
14 not going to charge corruptly. I think it
15 would not only be erroneous, it would be
16 confusing. Any other objections?
- 17 MR. McDONOUGH: I have none.
- 18 THE COURT: All right. I will follow this substantially,
19 but I probably should give it something of
20 an editing. If I have it in shape, I have
21 no objection, if you want to get here at
22 nine o'clock on the morning of the trial,
23 letting you read it ahead of time. I have
24 no objection to that.
- 25 MR. STEWART: Thank you.

1 MR. McDONOUGH: Thank you, your Honor.

2 THE COURT: All right.

3 (Thereupon the Court was in recess.)
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Proceedings, May 2, 1974.
Closing Argument by Mr. McDonough.

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1 PROCEEDINGS RESUMED, PURSUANT TO ADJOURNMENT, COMMENCING
2 AT 9:35 A.M.

3 (Defendant present, counsel present, two
4 jurors absent.)

5 THE COURT: Proceed.

6 MR. McDONOUGH: Your Honor, two of the jurors are missing.

7 THE COURT: I'm sorry. Two of the jurors are unable
8 to be here. One has reported that her
9 ride is not there, she cannot get in.
10 The other, have we heard from the other?

11 THE CLERK: No, your Honor.

12 THE COURT: We haven't heard from the other one at all.
13 We will have to move the alternates over.

14 THE COURT: First alternate, will you take Seat Number
15 4. Second alternate, Seat Number 11.

16 THE COURT: All right, Mr. McDonough.

17 MR. McDONOUGH: May it please the Court, counsel for
18 the prosecution, ladies and gentlemen of
19 the jury: While this has been a short
20 case, I think you realize by now that it
21 is an extremely important one, at least
22 it is very important to my client, BRO
23 Sciolino. Now, I am sure I am not impinge-
24 ing on the prerogative of the Court, who
25 will eventually after summations give you

1 the law, the rules of law which are to
2 guide you in your deliberations, in apply-
3 ing those rules of law to the facts as you
4 find them, to the evidence which is what
5 you believe is the truth in this case, and
6 the logical inferences which you may
7 legitimately draw from the evidence you
8 have heard, the pictures you have seen,
9 the documents you have seen. After all,
10 you folks are part of our system of just-
11 ice. You come from various walks of life,
12 various locations, some of you are home-
13 makers, some of you are businessmen, but
14 it is the sum total of your background,
15 your experience, your good common sense,
16 and your judgment which is going to decide
17 this case. You are certainly not here as
18 representatives of the United States Govern-
19 ment. You are certainly not here as repre-
20 sentatives of the defense. You are the
21 completely impartial twelve men and women
22 who eventually must face the awful --
23 I say "awful" in the sense of awe inspir-
24 ing task of passing judgment on a fellow
25 citizen and human being.

1 Now, I would like to briefly recall
2 some of the basic principles of law which
3 the Court told you about at the beginning
4 of the case a couple of days ago, and
5 which he will again repeat in his charge
6 to the jury. The first is, of course,
7 that the fact that the grand jury returned
8 an indictment charging my client with
9 these serious crimes is no evidence of
10 guilt, and should not be considered by
11 you in any way as bearing on his guilt or
12 innocence. The reason for that should be
13 particularly obvious, it seems to me, in
14 this case. The reason for the rule, here
15 is a case where some six months after Mr.
16 Shea did this work over a two month period,
17 this audit at the Main Chrysler-Plymouth,
18 he went into the grand jury and the grand
19 jury returned this indictment charging
20 this defendant with these crimes. The
21 grand jury didn't hear the defendant. The
22 defendant has had no lawyer present to
23 cross-examine Mr. Shea before the grand
24 jury. This is the only opportunity Mr.
25 Sciolino has had, through cross-examination

Closing Argument by Mr. McDonough.

1 of Mr. Shea, through introduction of evi-
2 dence and through presentation of his own
3 side of the case, to a fair and impartial
4 jury. The rule, of course, is a very basic
5 rule in our American system of justice,
6 that is, that every citizen charged with a
7 crime, no matter how minor or serious, has
8 the presumption of innocence. In other
9 words, he is presumed innocent until his
10 guilt is proved beyond every reasonable
11 doubt. Now, that means in practical appli-
12 cation, and I am sure you have all con-
13 scientiously observed that rule, that as
14 Bob Sciolino sat here Monday afternoon,
15 all day Tuesday and this morning, you are
16 continuing to look upon him as an innocent
17 man. That is your duty under the law, it
18 is your duty until such time after you have
19 heard our summations and after Judge
20 MacMahon has given you his charge, then
21 when you retire to the jury room it is to
22 continue with him until such time as each
23 and every one of you twelve jurors is per-
24 sonally convinced beyond every reasonable
25 doubt by the Government's evidence that

Closing Argument by Mr. McDonough.

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1 this man is guilty of these crimes.

2 We have no burden of proof. The defen-
3 dant did not have to take the stand, he did
4 not have to tell you what actually happened
5 on these days out there. We had a right,
6 as every defendant has a right, to sit here
7 and to cross-examine the Government wit-
8 nesses and argue to you that even taking
9 it at its strongest the Government's case
10 would not present facts sufficient to con-
11 stitute a crime. We did not do that. Mr.
12 Sciolino took the stand, and he put his
13 hand on the Holy Bible and took an oath to
14 tell the truth, the whole truth and nothing
15 but the truth, and he told you his recollec-
16 tion of what happened on these occasions.
17 The next rule is that every essential ele-
18 ment of the crimes charged must be satis-
19 fied. You must be satisfied beyond a rea-
20 sonable doubt of every essential element
21 of the crime charged before under the law
22 you may properly convict this man of these
23 crimes or either of them.

24 Now, what are these crimes charged?

25 As you know, in the first count the

Closing Argument by Mr. McDonough.

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1 defendant is charged with forcibly, forcible
2 bly assaulting, impairing, impeding and
3 interfering with Mr. Shea in the performance
4 of his audit out at Main Chrysler-Plymouth.
5 In the second count he is charged also with
6 impeding, impairing or intimidating Mr.
7 Shea not by actual force but by threats of
8 force.

9 Some of the elements there is no ques-
10 tion about. The Government had to prove
11 Shea was an Internal Revenue agent and
12 that he was conducting his duties as an
13 auditor out there at the agency, no ques-
14 tion about that, we don't dispute that.
15 The second is that the defendant forcibly
16 assaulted or impeded him -- this is in the
17 first count -- and thirdly, this is im-
18 portant, that it was done knowingly, will-
19 fully and intentionally. In other words,
20 that this defendant, when he said what he
21 did, when he did what he did, intended to
22 either assault, impair or impede Shea in
23 the performance of his duties. That applies
24 to both counts, and it must also appear
25 that the threats of force with particular

Closing Argument by Mr. McDonough.

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1 respect to the second count, were such as
2 to reasonably -- I say "reasonably", that
3 is the important word -- inspire fear or
4 trepidation in the mind of Mr. Shea.

5 Now, the Court will charge you, I be-
6 lieve, that the mere fact that -- the mere
7 timidity or apprehension on the part of
8 Mr. Shea in any respect is far from enough
9 to satisfy that important element of the
10 crime. It is a question of whether or not
11 Mr. Sciolino's statements and actions were
12 calculated reasonably to inspire a man, a
13 reasonable man under the same circumstances,
14 with fear.

15 Now, the Court has been kind enough
16 to submit to both the Government attorneys
17 and to myself this morning a copy of the
18 important sections of his charge, which
19 later he will give you in full. There are
20 just a couple of things I want to point
21 to, and so that I don't possibly misquote
22 anything -- of course, if I say anything
23 about the rules of law which is in any way
24 different, I hope it isn't, I don't think
25 it is, I'm sure it isn't on the basic

1 principles here -- of course, you will
2 take the Court's version of the law, not
3 mine. That is another one of our basic
4 rules of the game. Assault means any in-
5 tentional attempt or threat to inflict in-
6 jury upon a person of another when coupled
7 with an apparent present ability to do so
8 or any intentional display of force, such
9 as would reasonably arouse or instill fear
10 of immediate bodily harm in an ordinary
11 man under the same circumstances. The same
12 general definition may be, I presume, held
13 to apply to impairment, impeding, intimi-
14 dating, because he is charged with all
15 these things under both counts of the in-
16 dictment, the only difference being in
17 the first count he is charged with actual
18 use of force, as the Court will define it
19 to you, in assaulting, impairing, and im-
20 peding Mr. Shea, and in the second count
21 he is charged with doing it by threats of
22 force. I marked another page here -- I
23 thought I had -- yes. This I think is
24 quite important, ladies and gentlemen.
25 Mere interference with the performance of

1 a revenue agent's duties is insufficient.
2 The purpose of the law here is to ensure
3 that a revenue agent will be free to dis-
4 charge his duties unfettered and unhindered
5 either by the use of force against him or
6 by threats of force against him.

7 You have heard the evidence, ladies and
8 gentlemen, now let us briefly discuss the
9 facts, many of them undisputed, some of
10 them disputed, and see to what degree they
11 are disputed, and how important these things
12 are.

13 Now, after Mr. Sciolino was arraigned
14 on this indictment, we entered a plea of
15 not guilty, and we moved the Court for what
16 is known as a Bill of Particulars, itemiz-
17 ing the specific acts which Mr. Shea and
18 the Government charged constituted an as-
19 sult and threats of forcible assault or
20 intimidation. When I use the word "assault"
21 please assume, if I don't use every word
22 each time, I am including all the other
23 possible methods of committing the crime,
24 force or threats of force.

25 Now, what it boils down to is this,

1 there are only three of them that we have
2 had any proof on, and this is under Court
3 order, they made them give us this, a con-
4 versation between Shea and Sciolino on
5 7 August 1972, following Sciolino's taking
6 these pictures wherein Sciolino told Shea
7 he wanted the picture for posterity.
8 Three, a conversation between Shea and
9 Sciolino of 8 August 1972, wherein Sciolino,
10 having placed a gun box on his desk,
11 Sciolino stated if pushed too far he didn't
12 know what he might do either. Four, a con-
13 versation between Shea and Sciolino of
14 23 August 1972, wherein Sciolino told Shea
15 he was investigating Shea. That is it.
16 You notice that I have only read three.
17 They had another one in there, no proof
18 was offered on it, it isn't before the
19 Court.

20 The Court will also charge you, ladies
21 and gentlemen, and I think this is particu-
22 larly important in view of the circumstances
23 of this case, and while the Court has
24 charged you already, and I am sure will
25 again, that the questions asked by any

1 lawyer, whether by me or the Government
2 counsel, are not evidence, and if the
3 Court sustains an objection to them, that
4 in good conscience under your oath as
5 jurors, it must be completely disregarded
6 by you, any questions that were asked.

7 Let's think for a minute, let's first
8 look at Mr. Shea's background and what he
9 said, and then at Mr. Sciolino's background
10 and what he said. Mr. Shea said he is an
11 auditor, an Internal Revenue agent of some
12 18 years experience, I think, and he does
13 anywhere from ten to twenty corporate
14 audits a year. Obviously while he was
15 making this audit of Main Chrysler-Plymouth
16 back in the summer of 1972, he was also
17 making other audits elsewhere because he
18 would leave the job from time to time and
19 go to work on another job and then come
20 back. Overall, it took about two months
21 out there at Main Chrysler-Plymouth. Now,
22 one of the important things is if, in fact,
23 Bob Sciolino was going to assault, intimi-
24 date, impair or impede Shea in the per-
25 formance of his duty or if by threat of

Closing Argument by Mr. McDonough.

1 force attempted to assault, impair, impede
2 or interfere with his duty, what was his
3 motive? Have you heard one word of evi-
4 dence as to a possible motive why this man
5 should do these things? Now, this high-
6 lights what I said before, questions are
7 not evidence, evidence is what you have
8 heard from witnesses' mouths up here, evi-
9 dence is what you have seen in the form of
10 pictures and this gun box that we intro-
11 duced in evidence to show you what was in-
12 volved here. You are not, and I am sure
13 you will not under your conscience and
14 under your oath as jurors, to decide this
15 case on speculation, guesswork or surmise.
16 If you did, you would be violating your
17 oath as jurors, you would be doing a grave
18 injustice not only to my client, you would
19 be doing a grave injustice to your own
20 conscience and to this Court, and I know
21 you are not going to do it. You are not
22 going to decide this case by guesswork,
23 surmise or speculation. You are going to
24 base your verdict on the evidence in this
25 case. What evidence is there of motive

1 on Sciolino's part? He is a young man,
2 36 years old I think now, married, living
3 with his wife and three children out in
4 Clarence. He had a pretty good career, a
5 pretty good background, as you have heard
6 without any contradiction, he went through
7 high school and he went to the University
8 of Buffalo. While he was in the University
9 of Buffalo he had to leave school at Uncle
10 Sam's behest and serve time in the Army.
11 After his honorable discharge from the Army
12 he went back to the University of Buffalo.
13 He was married then, and he went to school
14 nights to continue his education. He didn't
15 get a degree but he was pretty close to it.
16 All this time while he was studying at the
17 University of Buffalo, he was working as
18 an automobile salesman. He gave the names
19 of several agencies here in western New
20 York that he worked for. He saved his
21 money, and he finally decided he would
22 like to get an agency. Now, you may dif-
23 fer with me on some of these things, but
24 I suppose when Chrysler Motor Corporation
25 gives an agency to a man, they probably

1 investigate him pretty well, don't they?
2 You remember that Chrysler had incorporated
3 this agency, Main Chrysler-Plymouth, back
4 in 1964 or 1965. They had been operating
5 it for five years before Mr. Sciolino got
6 into it, and apparently, according to one
7 of his quoted remarks to Mr. Shea, Chrysler
8 operating as a Chrysler agency, company
9 owned, hadn't done too well, they were
10 looking for a go-getter, somebody with drive
11 and sales ability who could make a go of
12 this agency. Of course, they had to offer
13 him an inducement. He had a contract with
14 them where he was allowed to buy out the
15 stock and he did. He started in that
16 agency in 1970, he worked hard, he sold
17 cars, he got it up to the point where I
18 think he said he had eight salesmen, some-
19 thing like that, 35 or 40 employees overall;
20 service attendants, mechanics, salesmen,
21 clerical help, stenographic help, things
22 like that, a pretty active agency.

23 Now, do you remember the rigorous
24 cross-examination that my friend, the able
25 United States attorney, put Mr. Sciolino

1 through the other afternoon as to the
2 source of his funds, where he got the
3 money to invest in this agency? What
4 in the name of justice does that have to
5 do with whether Bob Sciolino impaired,
6 impeded, intimidated or assaulted or
7 attempted to assault Mr. Shea? Was it
8 some sort of an attempt to embarrass Mr.
9 Sciolino? Mr. Sciolino told you where
10 he got the money to put in that agency;
11 from his own savings, from loans, and
12 particularly a big loan from the Marine
13 Midland Bank to which he still owes a lot
14 of money. That is where he got the money
15 to put in this agency. So much for that.
16 What was the reason for that, ladies and
17 gentlemen? What earthly bearing does that
18 have on the issues in this case, as to what
19 happened in the summer of 1972? In all
20 fairness, I ask you. Remember, questions
21 aren't evidence and you are not entitled
22 to decide this case, nor will you I am
23 sure, on any sort of guesswork, specula-
24 tion or surmise, based merely on the fact
25 that the district attorney cross-examined

1 him so carefully about the source of his
2 funds in getting the agency. You have
3 heard them, they haven't been contradicted.
4 The Government has offered no rebuttal
5 proof to prove otherwise. They had a
6 right to do it if they chose to, and they
7 didn't. So much for that.

8 Mr. Sciolino had accountants, a well-
9 known firm of accountants, Mr. Steigmeir
10 was the accountant who actually did his
11 work. He told you they were Chrysler ac-
12 countants here in Buffalo originally and
13 they stayed on with him. He had a lawyer,
14 Mr. Kenneth Cooper. He consulted with
15 Mr. Cooper on several occasions when Mr.
16 Shea first came in to do this audit. Shea
17 talked to Cooper on various things. This
18 bears on one of the things they claim that
19 intimidated or impeded Shea, that Sciolino
20 at one time told him in effect, 'Well, you
21 are investigating me, we are also investi-
22 gating you.' I will comment on that with
23 your permission in just a minute. Here
24 is a going business, Mr. Shea comes in.
25 Did the corporation, as far as the

1 accounting or auditing phase of the case,
2 did Sciolino or any of his employees or
3 officers attempt to impair, impede or in-
4 timidate Shea in the audit? To the con-
5 trary, they made everything available to
6 him that he wanted, except one thing, the
7 Chrysler agreement with Sciolino, and I
8 will talk about that in a minute. They
9 gave him an office, one of the salesman's
10 little cubicle offices to work in all the
11 time he was there, that he had the use of
12 for two months. Mr. Testa, the secretary,
13 cooperated, the comptroller. Mr. Testa
14 was a Chrysler man that stayed on after
15 Mr. Sciolino took over the agency and was
16 buying the stock back from Chrysler.

17 Now, at least up to this point we
18 haven't heard any impairment, impeding or
19 intimidation, and certainly no assault,
20 have we? There was one thing that Mr.
21 Sciolino didn't want to give Mr. Shea, what
22 was that? His agreement with Chrysler
23 Motor Corporation. Why? Not because he
24 didn't want to, but because Chrysler didn't
25 want him to see it. Do you remember

1 Mr. Sciolino told you that Chrysler had
2 been having litigation with various agen-
3 cies on contracts of this kind between the
4 manufacturing corporation and the dealers,
5 and Mr. Sciolino was naturally greatly be-
6 holden to Chrysler, he didn't want to do
7 anything to get Chrysler down on him. What
8 did he do? Did he arbitrarily refuse to
9 show that contract to Shea? Not at all.
10 Do you remember what he said he told Shea,
11 'It's Chrysler, you can take me off the
12 hook with Chrysler if you serve me with a
13 summons or subpoena, then I'll have to give
14 it to you.' That was after he talked to
15 his lawyer, this was done on lawyer's ad-
16 vice, and after Shea had talked to his
17 attorney, Mr. Cooper, on the phone about
18 this matter. Why couldn't Shea have simply
19 written out a summons, he has the power
20 under the Internal Revenue law, write out
21 a summons or subpoena when he got back to
22 the office the next day and serve it on
23 Sciolino, Mr. Sciolino would have been
24 happy to turn it over. Shea hasn't ex-
25 plained to you why he didn't do that, he

1 just didn't, he just kept asking Mr.
2 Sciolino for the agreement.

3 Now, if the Government is going to
4 argue that somehow Shea was intimidated
5 and prevented and made fearful of follow-
6 ing up his request for this agreement, Mr.
7 Shea's admitted action must belie any argu-
8 ment to that effect made by the Government,
9 and why? He continued to ask for it. He
10 wasn't fearful or intimidated. What hap-
11 pened? This hasn't been denied either.
12 Sciolino told him one day, 'I'm going out
13 to Reno, Chrysler is having a big show of
14 new cars, I am going to speak to some of
15 the big brass with Chrysler out there, and
16 if they say okay, I'll give you the agree-
17 ment.' Now, he went out to Nevada, he
18 went to Reno, and he did speak to the big
19 brass or someone in charge out there, and
20 they said okay, an Internal Revenue audit,
21 give it to them. What happened? As soon
22 as Sciolino got back to Buffalo, sometime
23 in August, he turned the agreement right
24 over to him, Shea. Shea at one time, you
25 remember, said he never got the agreement,

1 and when I asked about that he said not
2 up to that point in the audit. All right,
3 it may have been a misunderstanding, I'll
4 take his word for that. But he did get
5 it as soon as Sciolino got back from Reno.
6 There isn't a single document or paper in
7 the whole agency that Shea didn't have
8 access to in completing his audit. He
9 said he didn't complete the audit, but why?
10 Because he was taken off that audit and
11 put on another job, another audit, some-
12 thing he had been doing on and off all
13 summer. Well, do those facts square with
14 an attempt to impede, impair, assault or
15 intimidate up to then? I am going to
16 talk about the other two episodes in a
17 moment. But do they bespeak any motive
18 for Mr. Sciolino attempting these things?
19 He knew Shea was completing the audit, he
20 knew all these documents had been examined.
21 What earthly motive would he have for
22 intentionally -- and this must have been
23 done intentionally to satisfy the statute --
24 why? How can the Government explain with-
25 in the boundaries of the evidence in this

1 lawsuit, I challenge the United States
2 attorney to give you any logical or rea-
3 sonable motive for the alleged attempt
4 to instill fear in Shea.

5 Let's get down to the three chief epi-
6 sodes. I am going to handle them in re-
7 verse order because I think there is a dif-
8 ference of opinion as to whether or not
9 this statement 'We are investigating you'
10 came later in August, as Shea says, or
11 earlier, as Mr. Sciolino remembers. In
12 any event, what happened? Mr. Shea admitted
13 that he was one of the three top men in
14 the Audit Division and that from time to
15 time when others were away on other busi-
16 ness he was in charge of the office. Now,
17 here again Sciolino called his lawyer.
18 Here is a man who comes in and says he is
19 doing a routine audit, and, well, maybe
20 you or I, when a man says he has to run
21 the office, and we are not particularly
22 familiar with Internal Revenue management,
23 maybe we might get an idea legitimately
24 that maybe this man isn't just a regular
25 auditor, if he is that important to the

1 department, maybe he is here for another
2 purpose, you wonder what it is. So what
3 did Mr. Sciolino tell you actually hap-
4 pened? Mr. Shea tells us the bare state-
5 ment that Mr. Sciolino said, 'We are in-
6 vestigating you.' I asked Mr. Shea wheth-
7 er he had anything to hide, whether there
8 was anything that an investigation of him
9 would show to his discredit. No, not at
10 all. So there was no reason for Mr. Shea
11 to fear an investigation. Can the Govern-
12 ment explain to me how this statement,
13 'We are investigating you' can be construed
14 as an attempt to intimidate a man who is
15 doing his job as a veteran Internal Revenue
16 inspector? I would think Shea would be
17 proud and happy to have them investigate
18 him. He showed his credentials. So much
19 for that, ladies and gentlemen. But it
20 was based upon the knowledge acquired dur-
21 ing the course of the audit that Shea was
22 not a mere field man, he was one of the
23 three chief men in the Audit Division down
24 there, and at times apparently was office
25 manager when others were away on other

1 duties.

2 The next thing is the picture taking
3 episode. On August 7, according to Mr.
4 Shea, who says while he was doing his work
5 in the salesman's little office or cubicle
6 that day suddenly he heard or saw a flash,
7 heard a flash, I have forgotten, and he
8 looked up and there was Mr. Sciolino with
9 a camera. Mr. Shea says he said, 'What
10 is that for?' Well, I don't want to mis-
11 quote the words, I may not remember them
12 exactly but, in any event, Shea said,
13 'You took my picture, what was that for?',
14 and Mr. Sciolino on the spur of the moment,
15 as anybody might say, says 'I'm going to
16 save it for posterity.' Well, Shea goes
17 further and says, he quotes Sciolino, 'I'm
18 going to show it, I'm going to show it
19 around,' or something like that. Well, he
20 also admits that Mr. Sciolino came back
21 to him that afternoon and said that his
22 stomach had been upset, he was taking
23 medication which threw him off his feet a
24 little, apologized to Shea for taking his
25 picture. So much for that. What actually

1 happened? Sciolino told you that he had
2 been having trouble with the landlord,
3 the Chrysler Realty Corporation, over con-
4 ditions in the building, there was litiga-
5 tion in connection with it. He got this
6 Polaroid camera that they had around the
7 agency that day and went around several
8 places in the showroom taking pictures of
9 the cracks and presumably the water damage
10 in the walls that was the subject of the
11 controversy between him and the landlord.
12 There was one crack in the officer's cubi-
13 cle up against one of the solid showroom
14 walls that he wanted to take, and when he
15 took the picture Mr. Shea was in it because
16 he was working in there, but nevertheless
17 he took the picture. His purpose in tak-
18 ing the picture was to get the crack in the
19 wall. Perhaps a man of greater perception,
20 who thought faster or was more considerate,
21 might have said to Mr. Shea, 'Mr. Shea,
22 would you mind moving over, I want to take
23 a picture of the wall.' But is a man a
24 criminal because he may be thoughtless or
25 heedless and goes ahead and takes a

1 picture? He did it, in any event, and he
2 apologized to Mr. Shea later, according to
3 Shea's own admission, for taking the pic-
4 ture that day. When asked where the other
5 pictures were, where the pictures were,
6 Sciolino told you that the two he took
7 with flash bulbs, including the one in
8 the room where Shea was, didn't turn out
9 well, the other two or three or four he
10 took he sent into the Chrysler Realty Cor-
11 poration to show the extent of the damage
12 in connection with this corporation. Now,
13 is this an attempt to impede or impair or
14 threaten Mr. Shea with assault? How can
15 it be construed as such? Let's assume
16 the worst, let's assume the Government's
17 case at its strongest, ladies and gentle-
18 men, and Mr. Sciolino took Mr. Shea's pic-
19 ture. What is there criminal about that?
20 Mr. Shea says, 'You have no right to take
21 my picture.' He quotes Mr. Sciolino as
22 saying, 'This is my place of business, I've
23 got a right to do anything I want.' Is
24 this a criminal act, taking a man's pic-
25 ture? There is no proof that Mr. Sciolino

1 ever distributed this picture. There is
2 no proof that he showed it to anybody.
3 There is no proof that he ever did anything
4 with it to hurt Mr. Shea or to do anything
5 to Mr. Shea at all. Here again, I must
6 remind you, ladies and gentlemen, at the
7 possible cost of boredom and repetition,
8 we are not allowed to speculate, surmise
9 or guess. We are entitled to draw reason-
10 able inferences from evidence, but we can't
11 speculate or surmise. There is not one
12 word of evidence to couple this picture
13 taking episode with any intent, and he had
14 to have the intent to intimidate, impair,
15 impede or assault Mr. Shea.

16 Let's get down to the gun box episode
17 which Mr. Shea says happened the next day.
18 He was working in his cubicle. Now, there
19 is a difference of opinion as to what Mr.
20 Sciolino went in to get. This is before
21 Sciolino went out to Reno, this is impor-
22 tant when you decide who is telling the
23 correct version of what happened. This
24 is before Sciolino went to Reno, and I
25 remind you that up to that time Sciolino

1 had consistently refused to show this
2 agreement with Chrysler to Mr. Shea be-
3 cause he didn't want to get himself in
4 trouble with Chrysler. All right, what
5 did Shea say? He says that Sciolino in-
6 vited him into his office and said or in-
7 dicated or Shea thought he was going to
8 show him the Chrysler contract. He had
9 been consistently refusing to show him
10 the contract, what sudden change would
11 there have been in Sciolino to you as
12 reasonable people, what would have changed
13 his mind that day about this? Isn't it
14 reasonable to assume when Shea again re-
15 peated his demand for the contract, Sciolino,
16 trying to pacify Shea, in spite of these
17 demands, also continuing to refuse to give
18 the contract, went in and said, 'I'll show
19 you the Accounting System Review, this is
20 the accounting system Chrysler makes us
21 use, I will be glad to show you that.'
22 But what actually happened? First, Mr.
23 Shea's version. He says that Mr. Sciolino
24 reached in his desk right away, reached in
25 his desk and pulled -- not this, but an

1 identical gun box as this, with an identi-
2 cal cleaner, a gun cleaner, and some in-
3 structions in it, and put it on his desk.
4 That's what he tells you here in court.
5 He testified to the grand jury on this
6 very matter when things were fresh in his
7 mind. I don't care what he put in his notes,
8 he wasn't under oath when he made his notes,
9 but he was under oath when he appeared be-
10 fore the grand jury in March 1973, which
11 was closer to the actual date of the events
12 than we are now. He tells you that he was
13 attempting to tell the truth, the accurate
14 truth and the full truth, to the grand
15 jury at that time. All right, what did
16 he say? He said he went through the
17 motions of leafing through papers on his
18 desk and then he reached into the upper
19 right-hand corner of his desk drawer and
20 he removed a box and placed the box on
21 the table. Now, he attempts to tell you
22 that a table and desk are synonymous with
23 him when he is in court. Do you think
24 that is quite accurate, coming from a
25 man of 18 years experience as an Internal

1 Revenue agent, or do you think that ob-
2 viously refers to the table, the credenza
3 back of here? That is a table, this is
4 a desk, two and two still make four. Do
5 you think he is leveling with you when he
6 said when he used the word table before
7 the grand jury he actually meant desk?
8 This is an educated man, this is an exper-
9 ienced man who chooses his language. It
10 is up to you to decide whether he satisfies
11 you on that score. Now, what does Mr.
12 Sciolino tell you, and see whether it is
13 more reasonable. Here is a man who has
14 consistently refused to give up his agree-
15 ment with Chrysler. Nevertheless, to try
16 to placate Shea, he goes in and sits be-
17 hind his desk. 'Here', he says, 'I'll
18 show you, here is something, these are
19 Accounting System Reviews that Chrysler
20 makes us keep, see if those will help you.'
21 He said he went in his left-hand drawer,
22 he didn't see it. It was obviously a
23 very identifiable file. Mind you, in
24 this left-hand drawer, in one of the left-
25 hand drawers, in a holster was his gun

1 that he had a permit for. Did he pull
2 out a gun? No, never made any display of
3 a gun to Shea. Then he reached in the
4 right-hand drawers, and finally he came
5 to the drawer where this file, the Account-
6 ing System Review file, was, and on top
7 of it was this little gun box plus some
8 other papers. Naturally, to get the Ac-
9 counting System Review file he would have
10 to lift the other stuff up, and what did
11 he do with it? He said he turned around
12 and put it not on the desk but on the
13 table, on the credenza, and there it sat
14 while he handed Shea the Accounting Sys-
15 tem Review file, and Shea glanced at it
16 and said, 'I don't want that, I want the
17 agreement.' Sciolino tells you that
18 thereupon he took the other papers which
19 he had out, including the gun box, and
20 put them back in the desk, closed the
21 desk, and continued his conversation with
22 Shea.

23 Now, there is a little background
24 here which may be helpful to you, ladies
25 and gentlemen, in this respect. Both

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1 Shea and Sciolino have testified their
2 relations were essentially friendly. They
3 were not at each other's throats while
4 the audit was going on. Shea admits dur-
5 ing -- Mr. Sciolino being a salesman, I
6 suppose he might talk more than other peo-
7 ple and bring up subjects of conversation,
8 but there is no crime, many of us do that,
9 it depends on how we are built, what our
10 nature is -- many times during the course
11 of the audit Sciolino would bring up other
12 subjects for discussion, like football.
13 You can see by the picture Sciolino is
14 something of a football nut, he is a real
15 football fan, as you will see from the
16 picture. He talked football, and once they
17 got on something and they talked about
18 F. Lee Bailey, the criminal lawyer, and
19 they discussed his exploits and his cases
20 back and forth. What happened this time?
21 To change the subject, as Mr. Sciolino
22 told you, he thereupon started to talk
23 about man's history, I think. Shea said
24 that man was, I don't know, 170,000 years,
25 man was violent by nature, man loved vio-

1 lence, sports, things like that. Now,
2 Shea says then that -- I am trying to
3 quote -- I am going to quote his grand
4 jury testimony verbatim, but I don't have
5 his testimony here verbatim -- something
6 to the effect that I, meaning he, Sciolino,
7 don't know what I would do if I were pushed
8 too far. Even with those words, taken at
9 what Shea says now, what did he say about
10 it? He told the district attorney, 'I
11 thought it might be another attempt to
12 intimidate or a possible threat.' Even
13 Shea didn't consider it a threat at that
14 time, he said it might be a possible threat.
15 Apparently this was during the next five
16 months, he thought it over and over and
17 over again, and decided later it was a
18 threat. The question is what impression
19 did it have on him at that time, not in
20 his afterthoughts weeks and months later.
21 If Sciolino committed any crime, he didn't
22 commit it in Shea's mind, at home or in
23 his office three or four months later,
24 he committed it at the agency back in
25 August 1972.

1 Now, let's see what Mr. Shea told
2 the grand jury on the same occasion as I
3 quoted his statement that Sciolino put the
4 gun box on the table. "Mr. Sciolino went
5 into a discourse on the development of
6 the mind since the days of the Neanderthal,
7 which was 170,000 years prior to this date,
8 and during this development he compared it
9 with one-sixteenth of an inch on a twelve-
10 inch scale of the ruler and said, 'This
11 is all man has developed since he has been
12 uncivilized.' He said, 'Man is still
13 basically a violent person and that he
14 thrives on violence and what have you.'
15 He said, 'Man is basically an uncivilized
16 person.' He said, 'I don't know what you
17 would do or what anyone would do if you
18 were backed into a corner and there was
19 no way out.'" Mr. Shea told the grand
20 jury exactly the opposite of what he told
21 you here in court. I think the reason is
22 obvious. Here he said, "Sciolino said,
23 'I don't know what I would do if I were
24 backed into a corner.'" In the grand jury
25 he said or he quoted Sciolino as saying,

1 "I don't know what you, Shea, would do
2 or anyone would do if you, Shea, were
3 backed into a corner." Is that a threat?
4 Is that the sort of conduct or language
5 which in a 1974 court of American justice
6 can be construed as a threat of force or
7 violence against this agent? Is this
8 man's career to be destroyed, is he to
9 be convicted of these serious crimes on
10 the petulant desire of a frustrated and
11 offended revenue agent because his picture
12 was taken? I thank God, ladies and gentle-
13 men, that the Internal Revenue Service,
14 while it has a right to investigate our
15 affairs, and while we have to pay income
16 taxes to it, and while its agents do have
17 a right to make audits and question our
18 income tax returns, I thank God they don't
19 have the unilateral power to convict peo-
20 ple of crimes. We still have to go through
21 courts of justice and before men and women
22 such as you who have no interest in the
23 case, who have no ax to grind, and who
24 are here to do justice.

25 I note that Mr. Shea and many of his

1 friends are here. Apparently he isn't
2 satisfied with just being a witness, he
3 is here for the day of reckoning. He is
4 here, I suppose he hopes to be in on the
5 hanging. What reason is there for Shea,
6 an Internal Revenue agent who presumably
7 has other duties, to be here in this court-
8 room? He has a right to be, don't misunder-
9 stand me, it is a public courtroom, anyone
10 has a right to be here. But what sort
11 of a personal interest does he have in
12 this prosecution that he felt it necessary
13 after his testimony was given and when the
14 case was submitted to the jury to be in
15 on the death, so to speak? Perhaps the
16 United States attorney can explain that.
17 Perhaps the United States attorney can
18 explain why in a case of this kind the
19 Government sends in not only one but two
20 of its top attorneys in here to try this
21 case in relays. Is it to impress this
22 jury with the magnificence and the im-
23 portance of the United States Government
24 and the Internal Revenue Service? Well,
25 if it is, I am reasonably sure, ladies

1 and gentlemen, that it isn't going to
2 impress you to that extent that you are
3 going to do anything but decide his case
4 according to the law and according to the
5 rules of evidence, and according to the
6 sworn testimony which you have heard in
7 this case.

8 There is very little more I can say,
9 ladies and gentlemen. The United States
10 attorney, of course, has his proper
11 function in this court, which is to pre-
12 pare the Government's case. I have my
13 function as the defense lawyer, that is,
14 to thoroughly cross-examine the Government's
15 witnesses, and to present our side of the
16 case, and attempt to bring out every shred
17 of evidence in the case, not just that
18 favorable to the defendant, such as the
19 grand jury evidence, but every shred of
20 evidence on both sides of the case in this
21 courtroom. The presiding Judge, of course,
22 has a much more important function than
23 either the United States attorney or my-
24 self. He is the umpire, the impartial
25 umpire or referee, if you will, who

1 decides what evidence is proper and what
2 evidence is not proper. He is an impartial
3 arbiter who gives you the rules of law by
4 which you are to decide this case.

5 May I remind you again, ladies and
6 gentlemen, that you twelve men and women
7 in this jury box have a far more important
8 role in this case than the United States
9 attorney, a far more important role than
10 the defense, a far more important role
11 even than the presiding Judge, that is,
12 you are the sole judges of the facts in
13 this case, you are the one and only group
14 of people who are called upon to perform
15 one of the most sacred and awesome and
16 important duties you will ever be called
17 upon to perform in your lives, that is,
18 to pass judgment on this human being whom
19 I represent here. That is your prerogative,
20 and I know, I feel sure that each one of
21 you jurors is going to perform that duty
22 properly, conscientiously, and according
23 to his and her oaths as jurors.

24 Remember, ladies and gentlemen, the
25 Judge will charge you the essential elements

1 of the crime. We know there was no actual
2 force used here. Consider whether this
3 gossamer thread of evidence which the
4 Government has introduced here satisfies
5 you beyond every reasonable doubt, that
6 on these three incidents, 'We are investi-
7 gating you,' the taking of the picture of
8 the room while Shea was there, and the
9 pulling out of the papers and the gun box
10 and putting them on either the desk or the
11 credenza, as Sciolino told you, and whether
12 or not these first constitute forcible --
13 intentionally, that is important -- inten-
14 tionally forcible assault and interference
15 and impairment and impeding, or whether
16 or not they constitute willful and knowing
17 threats of force, and consider, last of
18 all, ladies and gentlemen, as I asked be-
19 fore, what motive has the Government shown
20 for this man to threaten Shea when, on the
21 other hand, he was giving Shea carte
22 blanche to examine every paper in the
23 place? What reasons would he have to
24 interfere, impede? Are these thoughtless
25 or careless remarks of a young businessman

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1 to be construed as a crime? Thank God
2 this is a free country, ladies and gentle-
3 men. You and I still have a right to ex-
4 press our thoughts and speak frankly even
5 to a mighty revenue agent, even though
6 he don't think apparently we have that
7 right.

8 We leave the case in your hands. I
9 have done all I can to present my client's
10 defense. I have to pass that duty to you
11 in this sense, that I believe that after
12 you have heard the Government's summation,
13 to which I know you will listen as care-
14 fully and attentively as I notice you have
15 to mine, and after you have listened atten-
16 tively and carefully to the Court's instruc-
17 tions as to the rules of law, you will not
18 be satisfied beyond every reasonable doubt
19 that the Government has established the
20 essential elements of these two serious
21 crimes, and that you will not feel that on
22 your oath as jurors you will have to implant
23 the eternal stamp of criminal on the brow
24 of this young man, and that your verdict
25 under our Constitution and under this flag

1 behind the Judge's bench, and on your oath
2 as jurors, will be one of not guilty.

3 Thank you very much.

4 THE COURT: All right, Mr. Stewart.

5 MR. STEWART: May it please the Court, Mr. McDonough,
6 ladies and gentlemen of the jury: It now
7 becomes my duty under the law to make the
8 final closing argument. Mr. McDonough has
9 correctly pointed out to you that this has
10 been a very short case, but it is one in
11 which the facts are very much in dispute.
12 You are the judges of the facts in this
13 case, and it is your duty to determine
14 what actually happened during the month
15 of August 1972 in the showroom of Main
16 Chrysler-Plymouth, that is what this case
17 is about.

18 It is clear that the testimony of the
19 two key witnesses, the defendant, Robert
20 Sciolino, and Revenue Agent Thomas Shea
21 cannot be reconciled. Now, there are,
22 however, some matters which clearly are
23 not in dispute, which are very important
24 in terms of the indictment in this particu-
25 lar case, and it may be well to review

1 those just briefly so that we can clarify
2 those several points and put them aside.

3 In order for you to convict on either
4 count of the indictment, you must be satis-
5 fied that Thomas Shea was in fact an em-
6 ployee or agent of the Internal Revenue
7 Service. That fact it seems is conceded,
8 Mr. McDonough said on Tuesday there was
9 no question about it. You heard the agent
10 testify that he had been an employee of the
11 Internal Revenue Service for some 18 years.
12 That fact is important and essential as to
13 both counts in this indictment. Now, the
14 second point that is essential for both
15 counts in the indictment is that the agent
16 was operating in the performance of his
17 official duties when he went to Main Chrys-
18 ler during August of 1972. There seems to
19 be no dispute about that fact either; both
20 the agent and the defendant have testified
21 that was the case. Those are two of the
22 most important elements or two essential
23 elements as to both counts of the indict-
24 ment. So it would seem that at the time
25 the events which are in question took

1 place, particularly on the dates August 7
2 and August 8, there can be no question
3 that the defendant knew the agent's author-
4 ity and the agent was in the performance
5 of his official duties.

6 Now, with these two questions aside,
7 we get to the heart of the indictment, as
8 to both counts of the indictment. The
9 first count of the indictment charges that
10 the defendant during the period that is
11 specified therein, and particularly during
12 the month of August, and particularly on
13 August 7 and August 8, that the defendant
14 forcibly assaulted, opposed, impeded and
15 interfered with Agent Shea. The second
16 count is a bit different. It says that
17 during the period the defendant endeavored
18 by threats of force to intimidate and in-
19 terfere with Agent Shea in the performance
20 of his duties. Now, what is meant by the
21 words endeavor and the words impede and
22 threats of force, and even the word forc-
23 ibly, will be explained to you in consider-
24 able detail by his Honor, Judge MacMahon,
25 as soon as I am finished. As to the

1 evidence, you have the testimony of
2 Thomas Shea, an 18-year veteran of the
3 Internal Revenue Service. This is a man
4 who does not carry a gun, he does not
5 carry a badge, he is an auditor, he works
6 with books and records. He testified that
7 on July 24, 1972, he went to Main Chrysler
8 for the first time, and he introduced him-
9 self to the defendant, Robert Sciolino,
10 who said he was president of the corpora-
11 tion. He said that he explained to Mr.
12 Sciolino the reason that he was there,
13 told Mr. Sciolino he was going to conduct
14 an audit for the Internal Revenue Service.
15 Things went along quietly. On August 3,
16 the agent testified that he first asked
17 Mr. Sciolino for the Chrysler agreement.
18 Mr. Sciolino said that he would not give
19 it to him, and he gave him several reasons
20 for that. There is no dispute about that.
21 There were apparently more discussions
22 about this Chrysler agreement, but it is
23 for you to decide, ladies and gentlemen,
24 whether the agent in any way was overbear-
25 ing in requesting this very basic document

1 necessary to conduct the audit. Mr.
2 McDonough has suggested that perhaps he
3 was, but I ask you to search your recol-
4 lection of the testimony of both the agent
5 and the defendant for any hint that the
6 agent was at all overbearing in requesting
7 this document. Then on August 7, at about
8 2:35 p.m., Agent Shea was seated in his
9 little cubicle, working at the desk on
10 the books and records, when he was sudden-
11 ly startled by a flash. He looked up and
12 he saw the defendant just a few feet away
13 with a flash camera pointed at him, and
14 he asked the defendant what he was doing.
15 Now, according to the defendant, he answered,
16 'I took your picture.' He did not say --
17 this is his testimony -- he did not say,
18 'I'm sorry, I'm taking a picture of a
19 crack in the wall.' He said to the agent,
20 'I took your picture,' and Agent Shea
21 said -- this is again coming from the
22 defendant's testimony -- 'Why did you take
23 my picture,' and the defendant claims to
24 have answered with only these words, 'For
25 posterity.' You heard Agent Shea testify

1 under oath from that witness stand that
2 there was more said at that particular
3 encounter, and this is of the utmost im-
4 portance in deciding the facts in this
5 case. The agent testified that after the
6 defendant said the words "for posterity,"
7 he said, "so I can show it around and tell
8 people this is the guy." The defendant
9 denies saying these words. The agent tes-
10 tified positively, unequivocally and
11 straightforwardly that these words were
12 in fact spoken. What did the words mean,
13 "so I can show it around and say that this
14 is the guy."? Mr. Sciolino testified in
15 this court on Tuesday that he was just
16 "kidding." But if that were the case, why
17 didn't he say to the agent, 'I'm sorry I
18 startled you, I was taking a picture of
19 the cracks, I need that picture for some
20 litigation,' and what about the story of
21 taking pictures of cracks, does that story
22 really hold water? You saw the defendant
23 testify to that in this courtroom on
24 Tuesday, you heard his explanation. If
25 you were really going to take a picture

1 like that, wouldn't you go up to the per-
2 son and say, 'Excuse me for just a moment,
3 I have to take a picture.'? That is the
4 normal, logical thing to do. But what
5 about the cracks, have we seen the other
6 pictures? He testified under oath in
7 this courtroom that he took at least four
8 or five other pictures, going from one
9 end of the wall to the other. Where are
10 those pictures, what happened to those
11 pictures? Were those pictures ever taken
12 and, if so, where are they? He testified
13 that the sun was coming in and he took
14 the pictures without a flash bulb. I ask
15 you, ladies and gentlemen, to examine de-
16 fendant's Exhibit 1, which is the picture
17 of the Main Chrysler showroom, look at
18 that wall there, it is solid glass, the
19 light certainly was streaming into that
20 camera. But where are the pictures of
21 the cracks in the wall? Those cracks in
22 the wall are very important to this case
23 because he put that forward to you as an
24 explanation for what he was doing, and
25 if there were no cracks in the wall, if

1 there were no pictures taken, then his
2 testimony to you, attempting to justify
3 and explain why he took that agent's pic-
4 ture is not in fact correct. That is for
5 you to decide, and I ask you only to con-
6 sider the testimony as a whole, think of
7 the whole story, does the whole story
8 hold water? Does his version of the whole
9 story hold water more than what that 18
10 year veteran agent swore to on that wit-
11 ness stand Tuesday? That is what this
12 case is about. So much for the camera
13 incident. I only ask you to keep those
14 words in mind, "so I can show it around
15 and say this is the guy."

16 Now, the agent has testified that he
17 believed that the defendant intended to
18 circulate that photograph. The agent has
19 also testified that despite his expressed
20 concern about the taking of the photograph,
21 the defendant never offered to give that
22 photograph back. Mind you, even if you
23 believe the defendant's story here that
24 what he did was take a photograph of a
25 crack, which ended up being a picture of

1 the defendant's head, a picture that he
2 said was blurred and no use at all, he
3 never gave the photograph back, even
4 though the agent was obviously upset about
5 that photograph having been taken.

6 The very next morning at approximately
7 9:40 a.m. the defendant and the agent had
8 a conversation about this Chrysler agree-
9 ment. The agent asked for it again. The
10 defendant, according to the agent's testi-
11 mony, invited the agent into his office.
12 Now, up to that point both of the witness-
13 es are in agreement, and beyond that point
14 there is no agreement at all. The agent
15 has testified that he walked into the
16 office, he sat down in front of this desk
17 portrayed in Defendant's Exhibit 2, that
18 the defendant sat down in his chair behind
19 the desk, that he opened the drawer, that
20 he took out a gun box, a gun box exactly
21 like this one, and he placed it on the
22 desk with the inscription pointed toward
23 the agent. The agent testified that both
24 he and the defendant looked at that gun
25 box which the defendant had just placed

1 there in his reach, and which was only a
2 few feet from the agent. Then Agent Shea
3 told you under oath that the defendant
4 began talking about man, about man's basic
5 delight in killing, in violence, about
6 man's unpredictability when cornered, and
7 then, according to the agent's testimony,
8 the defendant said to the agent that he
9 didn't know what he would do if he were
10 cornered and had no escape, and at that
11 moment his eyes dropped to the gun box,
12 then the phone rang. The agent testified
13 that the box remained there on the desk
14 in front of the defendant at the time that
15 he left that office. The agent also tes-
16 tified in this court as to what he felt
17 about those words, that he felt threatened
18 and intimidated by them, particularly in
19 view of the episode of the previous day
20 in which the defendant had taken his photo-
21 graph and had said, according to the agent's
22 testimony, that he had taken it so that he
23 could show it around and tell people this
24 is the guy. The agent reported the incident
25 to his superiors. The defendant's version

1 is quite different, and that is what is
2 at the heart of this lawsuit, the differ-
3 ence in the testimony of two witnesses.
4 The defendant would have you believe that
5 he invited the agent into the office, which
6 is correct, and both sat down, he on his
7 side of the desk, the agent on the other,
8 that he then turned and began rummaging
9 through the desk to find this particular
10 file he was interested in, that he located
11 the file or the particular document in the
12 bottom right-hand drawer, and it was under-
13 neath a large pile or stack of papers with
14 the gun box sitting on top of it. He
15 testified that he reached into the drawer,
16 picked out the stack of papers, turned
17 around behind him this way, not what you
18 might think normally a person would do,
19 lay it on the front of the desk, but that
20 he turned all the way around and put that
21 stack of documents with the gun box on
22 this credenza which is behind the desk,
23 that he then turned back around, reached
24 into the drawer, came out with the docu-
25 ment and handed it over the desk to the

1 agent, and that the agent looked at it
2 briefly and returned it to him, and that
3 he then put the document back into the
4 drawer, reached back around behind him
5 and picked up the stack of papers with
6 the gun box delicately balanced on top,
7 and placed them back into this large
8 drawer. It is then, and only then, that
9 the defendant tells us that he began to
10 have a discussion with the agent, a dis-
11 cussion about the high cost of taxes. He
12 said the agent agreed with him, as we all
13 would. He also testified, and this is
14 all that he testified to, he testified
15 that he then had some sort of philosophical
16 discussion with the agent. Now, ladies
17 and gentlemen, there is no way in which
18 these two versions of a very short, brief
19 transaction can be reconciled with each
20 other. The defendant insists that a
21 senior Government employee for some 18
22 years who held, as Mr. McDonough concedes,
23 a position of trust, Number 3 in his par-
24 ticular office, who has risen to that
25 position of responsibility through 18 years

1 of hard, complicated work, that that
2 agent does not know and is completely
3 wrong when he said under oath in this
4 court of law to you that he was looking
5 at a gun box two feet or three feet in
6 front of him, sitting on the defendant's
7 desk, with the inscription pointed at him,
8 at the moment the defendant spoke the words,
9 "I don't know what I would do if I were
10 cornered and had no escape." The defendant
11 wants you to believe that agent back there,
12 who is certainly no youngster, and certain-
13 ly not the kind of person who is going to
14 panic and can't remember something, that
15 that agent does not know that he was look-
16 ing at a gun box when he heard those words.
17 That is the essence of this case.

18 Mr. McDonough, quite properly, has
19 made much of the fact that in testifying
20 before the grand jury the agent used the
21 word "you" instead of "I", and he used
22 the word "table" instead of "desk." I
23 ask you to recall the agent's demeanor on
24 the witness stand. You have seen him, you
25 have seen him testify, you have seen him

1 under the most searching cross-examination
2 by not just a mere lawyer, but a lawyer
3 that you must recognize is one of the very
4 best in the business, certainly one of the
5 most experienced in the business. You saw
6 the agent explain why he used that word,
7 what he meant. But you were not left
8 simply with that, you were not left just
9 with the agent's testimony in this court-
10 room last Tuesday. There is something else
11 that is perhaps most important that you
12 may rely upon, that is, that portion of the
13 agent's notes which were made almost im-
14 mediately after the incident, and when it
15 was freshest in his mind, and well before
16 the grand jury proceedings, and that por-
17 tion of the notes that is most important
18 says the following, "He continued with
19 man's uncivilized nature, of his basic
20 delight in sports, violence and killing.
21 He talked of man's unpredictability, of
22 what man might do if cornered. He said
23 he did not even know what he might do if
24 backed into a corner and had no way out
25 or no escape. As he said this, his eyes

1 dropped to the box he had placed on the
2 desk." That is the note that the agent
3 wrote, recording the event immediately
4 after it occurred, and that is precisely
5 what this defendant asks you to believe
6 never happened.

7 Now, ladies and gentlemen, the question
8 before you on Count 2 of the indictment is
9 whether the defendant endeavored by threats
10 of force to intimidate and to impede Agent
11 Shea in the execution of his duties. The
12 agent has sworn to you on the witness stand
13 under oath that he felt threatened and
14 intimidated by the gun box incident, par-
15 ticularly in view of the previous day's
16 events when his photograph had been taken,
17 and when the defendant said to him that
18 he took that photograph so that he could
19 show it around and say this is the guy.
20 We have the agent's sworn testimony that
21 this audit was not in fact completed.
22 There is no evidence at all before you
23 that the agent was assigned to any other
24 audit at this time.

25 Now, Count 1 of the indictment is

1 similar to Count 2, but involves a slightly
2 different element. It involves the word
3 "forcibly," that the assault or the imped-
4 ing or the intimidation must be done forc-
5 ibly. I believe the Court will instruct
6 you that the word "forcibly" in Count 1
7 refers not simply to actual violence, but
8 also to threats of force and, in particular,
9 you will be concerned there with whether
10 or not the defendant had an apparent pres-
11 ent ability to inflict harm.

12 Now, the defendant has testified that
13 he did not have a gun in that box. He
14 has testified that the gun was not in the
15 box, it was in the drawer of the desk
16 where he sat. There is no question now
17 that there was a gun in existence. You
18 know what the agent thought as he sat
19 staring at the gun box because he has
20 testified to it, and he told you what he
21 thought. You know that that agent could
22 not leave the audit because he testified
23 that he was assigned there and he could
24 not leave until ordered to leave, and that
25 that did not occur until August 31, over

1 twenty days after this incident on the
2 7th or the 8th.

3 Now, put yourself for a moment in the
4 agent's position that morning at Main
5 Chrysler, 9:40 a.m., sitting in the defen-
6 dant's office, pictures of which we have
7 in evidence. Look at this gun box, and
8 imagine that you were alone in that office,
9 a few feet from the gun box sitting on the
10 desk pointed toward you, and imagine that
11 the person that is across the desk is dis-
12 cussing the uncivilized nature of man,
13 man's basic delight in killing and violence,
14 and imagine that man saying that he does
15 not know what he would do if he were
16 cornered and had no escape. Imagine what
17 thoughts, as an auditor with 18 years ex-
18 perience, what thoughts are racing through
19 your mind at that moment, wondering what
20 will this audit show, what could this
21 audit show that might make that man feel
22 cornered and feel that he had no escape.
23 Imagine that after this man has said this
24 to you that his eyes dropped to this gun
25 box and he looks at it after he has just

1 said that he doesn't know what he would
2 do if he were cornered. A gun box, ladies
3 and gentlemen, which may or may not at
4 that particular moment have had a gun in
5 it, but a gun box which most certainly at
6 some time did have a gun in it, and could
7 very well have had a gun in it that August
8 morning when it was pointed right at that
9 agent, sitting several feet away. The
10 question is would not that conduct reason-
11 ably arouse and instill fear of immediate
12 bodily harm in the ordinary man or woman
13 under the circumstances? How would you
14 feel if you were sitting in the agent's
15 shoes, alone in that office with this
16 defendant, that gun box pointed at you,
17 with these words spoken, having had your
18 picture taken the day before by a man who
19 said he was taking it so he could show it
20 around and say this is the guy? Now, the
21 defendant denies categorically that the
22 essential words testified to by the agent
23 under oath were ever spoken by him, he
24 denies it.

25 A lot has been said about motive.

1 What is the motive of the agent? Mr.
2 McDonough says that the agent is here to
3 gloat, the agent is here to see the hang-
4 ing. That is not true. The agent is here
5 because I told him to be here. He is a
6 witness, he must remain until the end of
7 this case.

8 MR. McDONOUGH: I object, if the Court please. There is
9 no law that says the witness has got to
10 be here during the summations or charge,
11 that is an improper statement.

12 THE COURT: There is no such law, it is optional
13 whether he is here or not and, of course,
14 there is no evidence that you told him to
15 remain.

16 MR. STEWART: I realize that, sir.

17 He is here because I told him to be.
18 He is not here, and there is not one scrap
19 of evidence before you that this agent
20 bears any malice, any ill will this very
21 day toward this defendant. The agent was
22 on that stand for several hours Tuesday
23 before you, under cross-examination by
24 Mr. McDonough, who is concededly one of
25 the best defense attorneys in this entire

1 area. Did he, during that entire cross-
2 examination, even elicit so much as one
3 hint, one scrap of evidence that would
4 suggest that that agent back there this
5 very day bears any ill will toward this
6 defendant? Nothing, not a hint. As a
7 matter of fact, the testimony that you
8 have before you is that the agent said,
9 'Yes, I continued to have conversation
10 with him, we established some kind of
11 rapport, I had to be there, I had to do
12 the best I could under the circumstances.
13 That is the evidence which was brought
14 out by Mr. McDonough. Is there any other
15 evidence that Agent Shea knew the defendant
16 before he went out there July 24 to begin
17 the audit? None, none at all. Certainly
18 no evidence that he had any grudge against
19 him from something that had happened before,
20 or ever heard of him before. There is no
21 evidence that when the agent went out
22 there that he treated the defendant in a
23 bad manner or discourteously, or that he
24 harassed or that he was in any way over-
25 bearing. Indeed, an interesting piece of

1 evidence that came out on cross-examina-
2 tion was that the agent said in 18 years
3 as a revenue agent he has never served an
4 Internal Revenue summons upon any taxpayer
5 for a book or record. He has always de-
6 pended upon voluntary disclosure and
7 cooperation. I ask you, ladies and gentle-
8 men, a man who has never in 18 years served
9 a summons on a taxpayer, is that the kind
10 of an oppressive Government agent that
11 Mr. McDonough would like you to think of?
12 Is that a man who is overbearing and de-
13 manding and charges through a man's office
14 saying, 'I want this, I want that, I want
15 everything in sight, if you don't give it
16 to me, you are going to be in trouble, I
17 will serve a summons on you'? Quite the
18 contrary, the agent never served a summons
19 in 18 years of dealing with taxpayers.
20 The defendant, himself, testified that in
21 his dealings with the agent, the agent ex-
22 plained to him that it was an audit, what
23 the audit entailed since the corporation
24 had just been reorganized or had come under
25 new management certain procedures would

Closing Argument by Mr. Stewart.

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1 be followed, other records would be neces-
2 sary. He explained why he had to have
3 the records. No hint that he demanded or
4 was in any way tyrannical or overbearing,
5 yet Mr. McDonough had that agent on the
6 stand, he had that defendant on the stand
7 and not one hint of it.

8 A lot has been said about the Chrysler
9 agreement. Remember that the agent asked
10 for the Chrysler agreement. This is the
11 basic document. He asked for it on August
12 3 the first time, and the defendant said
13 he wouldn't give it to him. He said he
14 cited several reasons, one of which was it
15 might be embarrassing, the other which was
16 he did not think Chrysler would want him
17 to show it. That is interesting because
18 ten days after the request was made, and
19 there has been no evidence or testimony
20 that during that ten day period Mr. Sciolino
21 ever talked to Chrysler by telephone and
22 asked them what he should do, and we know
23 from his own testimony, his own admission,
24 that on the 13th he went to Reno and he
25 talked to the Chrysler people then, and

1 he asked them, 'The agent says he would
2 like to have this document, can I turn
3 it over?' They said, 'Okay, sure, turn
4 it over.' The agent testified that at
5 the time the audit was suspended on
6 August 31, almost 20 days later, 17 days
7 later, 17 days after Chrysler said, 'Sure,
8 turn it over to him,' he still didn't have
9 that document. He did not get the docu-
10 ment until he stopped back on one of the
11 two other occasions, one either in Septem-
12 ber, and I think there was one occasion
13 in October, he got it on one of those two
14 occasions. Now, any evidence that the
15 agent was anything but patient and courte-
16 ous in attempting to get the most basic
17 document necessary to understand the
18 existence of this corporation? Nothing.
19 Yet Mr. McDonough has suggested to you or
20 would like you to think that this agent
21 was overreaching, the agent was overbearing.
22 Yet I submit to you, ladies and gentlemen,
23 not so much as one tiny shred of evidence,
24 and there is plenty of evidence from the
25 testimony of both the agent under

1 cross-examination and from the defendant,
2 himself, that this agent at all times con-
3 ducted himself with the utmost propriety,
4 in a most courteous manner, and fully to
5 the credit of not only the Internal Revenue
6 Service but the United States Government.
7 Now, if the agent has no motive whatsoever
8 to concoct a false story, and if there is
9 no way to reconcile the two stories, why
10 would the agent get up on the witness stand
11 in this court, and indeed write a note of
12 the incident which was false, testify
13 falsely, and thereby jeopardize an 18 year
14 career in which he is now one of the top
15 three auditors in the IRS, against a man
16 who he never knew before, there is no
17 evidence that he was impatient or particu-
18 larly troubled by, why would he concoct a
19 story? I submit to you that the agent has
20 no motive to tell anything in this court-
21 room but the truth, and that is exactly,
22 ladies and gentlemen, what he has told
23 you from the first moment he took that
24 stand, right straight through his cross-
25 examination.

1 Now, talking about motive, what about
2 the defendant? Well, we don't know wheth-
3 er he had a motive as to the audit because
4 the audit was never completed. We don't
5 know what the audit would have shown had
6 it been completed. It is true, as Mr.
7 McDonough suggests or has correctly stated,
8 you may not speculate, you may not convict
9 because of surmise or speculation, but
10 you may infer, that is quite proper for
11 the jury to do --

12 MR. McDONOUGH: Pardon me --

13 THE COURT: Please don't interrupt.

14 MR. McDONOUGH: Sorry.

15 THE COURT: I would say to the jury, as I have had to
16 say in every case I have had here, I am
17 the judge of the law, take the law from
18 me, not from either lawyer.

19 MR. STEWART: You may ask yourselves this. Why
20 would the defendant deny that he took the
21 agent's picture intentionally, as the
22 agent's testimony indicates? Why would
23 the defendant tell you a story about
24 cracks in the wall, cracks in the wall
25 that we have never seen a picture of,

1 and taking pictures in the sunlight?
2 Why would he deny having told the agent
3 that he took the picture so he could show
4 the picture around, so that he could say
5 this is the guy, as the agent has positive-
6 ly testified to? Why would he tell you
7 that the gun box was pulled out with a
8 stack of papers and laid behind him, in-
9 stead of on the desk as the agent has
10 testified to? Why would he tell you that
11 he replaced the gun box before getting
12 in to what he described as a philosophical
13 discussion, when the agent has testified
14 and wrote in the original notes clearly
15 and unequivocally and firmly that that
16 gun box was sitting right in front of
17 him right on the desk at the very moment
18 the defendant said he did not know what
19 he would do if he were cornered? I submit
20 to you, ladies and gentlemen, that the
21 agent has told the account as it happened,
22 and that in fact this defendant in August
23 of 1972 had embarked upon a deliberate,
24 calculated and carefully orchestrated
25 attempt to do one thing, to put that agent

1 in fear and to drive him out of that
2 showroom. That is exactly what happened.
3 The agent was put in fear and that audit
4 was terminated before it was completed.
5 It is submitted that it is the defendant
6 and only the defendant who has had a motive
7 from the outset to come into this court
8 and tell you a story which was a fabrica-
9 tion. He had a motive to stop that audit
10 and he did stop it, he chased that agent
11 right out of there.

12 That, ladies and gentlemen, is exactly
13 what the two statutes, the law in this
14 case, prohibits and forbids, and it is
15 submitted that on the basis of the cred-
16 ible evidence that you have heard in this
17 courtroom you are justified in finding
18 beyond a reasonable doubt, first, that
19 the crimes charged in Counts 1 and 2 of
20 this indictment, forcibly intimidating
21 and interfering with Agent Shea in the
22 execution of his duties and with endeavor-
23 ing by threats of force to intimidate and
24 impede Agent Shea in the execution of his
25 duties, were in fact committed during

1 August of 1972, and particularly on the
2 events of August 7 and August 8, 1972, and,
3 secondly, that those two crimes were com-
4 mitted by this defendant, Robert Sciolino,
5 exactly as charged in the indictment and,
6 therefore, that he is guilty.

7 I wish to thank you very much for your
8 attentiveness throughout these proceedings.

9 THE COURT:

10 We will take a very short recess, and
11 then the Court will instruct you on the
12 law.

13 (Thereupon the Court was in recess at
14 11:18 a.m.)
15
16
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25

Charge of the Court.

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1 (Proceedings resumed, pursuant to recess,
2 commencing at 11:25 A.M.)
3

4 (Defendant present, counsel present,
5 jury present.)
6

7 CHARGE OF THE COURT
8

9 THE COURT: It now becomes my function to instruct
10 you on the law that must govern your decision
11 in this case. It is your duty to accept the
12 law as I give it to you, whether or not you
13 agree with it or whether you have some
14 different idea about what the law is or
15 ought to be. In short, as you have just
16 heard me tell the lawyers, I am the exclusive
17 judge of the law in this courtroom.

18 Now, just as I am the exclusive judge
19 of the law, you, and you alone, are the
20 exclusive judges of the facts. It is you,
21 and you alone, who decide what weight and
22 what effect and what value you will give
23 to the evidence, you decide whether or not
24 to believe a witness and, of course, ultimate-
25 ly you decide the guilt or innocence of

1 this defendant.

2 You are not to conclude from any rulings
3 that I have made throughout this trial or
4 any questions that I have asked that I have
5 any opinion one way or the other as to the
6 guilt or innocence of this defendant. That
7 decision is exclusively up to you.

8 Now, finding the facts is merely a
9 process by which you, the jury, consider
10 the exhibits and the testimony of all the
11 witnesses, sift out what you believe, weigh
12 it in the scale of your reasoning powers,
13 and draw such conclusions and inferences
14 as your experience and common sense tell
15 you the evidence supports and justifies,
16 and decide just where the truth lies in
17 this case.

18 Now, in this connection, all evidence
19 is of two general types, direct evidence
20 and circumstantial evidence. Evidence is
21 direct when the facts are shown by exhibits
22 which have been admitted into evidence or
23 when sworn to by witnesses who have actual
24 knowledge of them, knowledge which they
25 have derived from the use of one of their

1 fundamental senses, something that they
2 have heard, something that they have touched,
3 something that they have seen, and so on.
4 Now, circumstantial evidence simply means
5 drawing a logical inference or conclusion
6 from other connected facts that have been
7 seen or heard. The classic example of
8 circumstantial evidence is Robinson Carusoe's
9 conclusion that there was another man on
10 the island from his observation of the
11 foot print in the sand. The foot print
12 was direct evidence, he saw it with his
13 own eyes, but he never had seen the other
14 man, but he knew that it was not his foot
15 print, and common sense justified and
16 indeed compelled the conclusion that there
17 was another man on that island from the
18 human foot print. Not all circumstantial
19 evidence knocks you down with a conclusion
20 the way that one did, but I am sure that
21 you are familiar with the process, we all
22 use it in our daily lives, we draw logical
23 conclusions from other connected facts, and
24 that is all it means in this case. Now,
25 there is no greater requirement when

1 evidence is circumstantial than when it is
2 direct, for in either case the jury must
3 be convinced beyond a reasonable doubt
4 before it can convict the defendant.

5 Now, it is your memory of the evidence
6 that controls, it is not the way I remember
7 it, it is not necessarily the way counsel
8 remember it. If counsels' version of the
9 evidence, and the inferences to be drawn
10 from it, agree with your own memory and your
11 own common sense and your own inferences,
12 then you should accept their arguments. But
13 to the extent that you have a different
14 memory or a different inference to draw
15 from that evidence, you are bound by your
16 oath to rely on your memory, your common
17 sense and your inferences.

18 Now, what I have just said about counsel
19 also applies to me, but I do not intend in
20 this case to review the evidence. It is a
21 short and simple case. Basically, there are
22 not any disputes about the essential facts.
23 The disputes lie rather in the area of the
24 inferences that are to be drawn from those
25 facts.

1 Now, in this connection you should bear
2 in mind that questions by counsel are not
3 evidence, and it should only be considered
4 as evidence if the witness agrees with the
5 facts contained in a question, otherwise
6 they are not evidence. Questions as to
7 which the Court has sustained an objection
8 are not evidence.

9 Now, one of your most important functions
10 is to determine just where the truth lies.
11 It is your exclusive function to decide
12 which witnesses you will believe, and this
13 is so as to every witness, whether called
14 by the Government or by the defense.

15 The witness Shea is entitled to no
16 greater credence because he is a revenue
17 agent than any other witness. You judge
18 his credibility by the same standards that
19 you apply to all other witnesses.

20 Now, you are not to be influenced by
21 the number of witnesses called by either
22 side. You are concerned not with the
23 quantity of the evidence but with the quality
24 of the evidence.

25 The first test which you should apply

1 in determining the trustworthiness of a
2 witness is to measure what he says against
3 your plain, everyday common sense. You are
4 not bound to believe unreasonable statements
5 or to accept testimony that defies your
6 common sense or, worse, insults your
7 intelligence just because the statements
8 are made under oath in a public courtroom.

9 You saw the witnesses in this case. In
10 deciding whether to believe a witness, you
11 should consider his conduct and his manner
12 on the witness stand. I saw you watching
13 these witnesses with careful scrutiny as
14 they were testifying. How did the witness
15 impress you? Was the witness being frank?
16 Was he being evasive? Did his version
17 appear to be straightforward? Did he try
18 to conceal some of the facts? Was he just
19 parroting answers? Did he have any motive
20 to testify falsely? Is he interested in
21 any way in the outcome of this case? How
22 strong or weak was his memory of important
23 events? In short, can you rely on him, can
24 you trust him, did he show any bias or
25 prejudice in this case toward either side?

1 You ought to consider also his opportunity
2 to know the facts about which he testified,
3 and the probability or improbability of
4 what he said and, very significantly, you
5 should ask yourselves, how does his testimony
6 add up when considered with all of the other
7 evidence, how far does his story check out
8 with the other evidence? For example, did
9 Agent Shea see a gun box? Any question
10 about it? Was there a flashbulb picture
11 taken of Agent Shea? Any question about it?
12 That is the kind of questions I want you
13 to put to yourselves. How does the story
14 check out with the other evidence? Are
15 there any inconsistencies in the witness'
16 testimony and, if so, how important are
17 they? Has he made any inconsistent state-
18 ment on an earlier occasion and, if so, how
19 important are these inconsistent statements?
20 One of these has appeared in the evidence;
21 Agent Shea apparently testified before the
22 grand jury under oath that the gun box
23 was placed on the table, here he said the
24 desk. I leave it to you whether there is
25 any difference. But also before he

1 testified before the grand jury he made
2 a prior consistent statement, as I recall
3 it. But, again, it is your recollection
4 of the evidence that controls and not mine.
5 Now, in determining whether there was any
6 inconsistent prior statement, you should
7 consider not only what was said but what
8 was left out.

9 Now, the defendant testified as a
10 witness. He was not required by law to
11 do so, and his appearance as a witness was
12 purely voluntary. Had he not testified,
13 his failure to do so could not have been
14 considered by you in any manner in determin-
15 ing his guilt or innocence. But having
16 testified, the law requires that his testi-
17 mony be judged and appraised by the same
18 standards applied to the testimony of any
19 other witness, giving consideration, of
20 course, to his background, to his personal-
21 ity, and to his natural interest in the
22 outcome of this trial.

23 Now, if you find that any witness has
24 deliberately and willfully lied with respect
25 to any material fact in his or her testimony

1 offered at this trial, you may follow either
2 one of two courses. You may accept as much
3 of the witness' testimony as you believe
4 or, if you wish, you may reject his entire
5 testimony.

6 Now, before discussing the crimes
7 charged here, I want to remind you again
8 that an indictment is a mere accusation, it
9 is not evidence of the truth of the charges
10 made, and you are to draw no inference of
11 guilt against this defendant from the mere
12 fact that he has been indicted, which simply
13 means that he has been accused of a crime.
14 The defendant has denied the charges made
15 against him here, both by his plea of not
16 guilty and by his testimony on the stand.

17 The defendant has no burden of proof
18 to sustain in this case. He is under no
19 obligation to produce any witnesses nor
20 offer any documentary evidence. He is
21 presumed to be innocent, and this presumption
22 of innocence continues throughout the trial
23 and during the deliberations of the jury,
24 and this presumption of innocence is over-
25 come when, and only when, the Government

1 proves the guilt of the defendant beyond
2 a reasonable doubt.

3 Now, what do I mean by "beyond a reason-
4 able doubt"? As the phrase implies, a
5 reasonable doubt is a doubt that is based
6 upon reason, a reason which appears in the
7 evidence or in the lack of evidence. It
8 is not some vague, speculative, imaginative
9 doubt, nor a doubt based upon emotion,
10 sympathy or prejudice, or upon what some
11 juror might regard as an unpleasant duty.
12 The Government is not required to prove the
13 defendant's guilt beyond every possible
14 doubt, nor to an absolute or mathematical
15 certainty, because such measure of proof
16 is usually impossible in human affairs.
17 You should review the evidence as you
18 remember it, sift out what you believe,
19 discuss it, compare your view of the evi-
20 dence with the views of your fellow jurors.
21 If that process produces a solemn belief
22 or conviction in your mind, such as you
23 would be willing to act upon without
24 hesitation if this were an important matter
25 of your own, then you may say that you have

1 been convinced beyond a reasonable doubt.
2 On the other hand, if your mind is wavering
3 or so uncertain that you would hesitate
4 before acting if this were an important
5 matter of your own, then you have not been
6 convinced beyond a reasonable doubt, and
7 your verdict must be not guilty.

8 Now, Count I of this indictment charges
9 the defendant, Robert Sciolino, with unlaw-
10 fully and forcibly assaulting, impeding,
11 intimidating and interfering with Revenue
12 Agent Thomas Shea of the Internal Revenue
13 Service, who was engaged in the performance
14 of his official duties in auditing Main
15 Chrysler-Plymouth Corporation during the
16 period between July 15, 1972 and September
17 1, 1972. In short, the events we are
18 concerned with here occurred in the summer
19 months of 1972.

20 Count I of this indictment is based
21 on a federal law which for our purposes
22 provides:

23 "Whoever forcibly assaults, resists,
24 opposes, impedes, intimidates or interferes
25 with an Internal Revenue agent while the

1 agent is engaged in or on account of the
2 performance of his official duties, shall
3 be guilty of a crime."

4 In order to convict the defendant on
5 Count I, the Government must prove to your
6 satisfaction, beyond a reasonable doubt,
7 each of the following elements:

8 (1) That Officer Thomas S. Shea was
9 an agent of the Internal Revenue Service
10 from on or about July 15, 1972 until
11 September 1, 1972;

12 (2) That during that period Shea was
13 engaged in the performance of his official
14 duties for the Internal Revenue Service,
15 specifically, auditing the books and records
16 of the Main Chrysler-Plymouth Corporation;

17 (3) That the defendant forcibly
18 assaulted, resisted, opposed, impeded,
19 intimidated or interfered with Shea while
20 he was engaged in connection with the
21 audit; and

22 (4) That the defendant acted knowingly
23 and intentionally.

24 Now, what is an assault? An assault
25 means any intentional attempt or threat to

1 inflict injury upon the person of another
2 when coupled with an apparent present
3 ability to do so, or any intentional display
4 of force, such as would reasonably arouse
5 or instill fear of immediate bodily harm
6 in an ordinary man under the same circum-
7 stances. Thus, an assault may be committed
8 without actually touching or striking or
9 doing bodily harm to the person of another.

10 Now, as to the question of apparent
11 present ability to inflict harm, it is not
12 necessary that what appears to be a weapon
13 actually have the capacity to kill or injure.
14 It is sufficient that an ordinary person
15 under the circumstances would reasonably
16 believe that a weapon or what appeared to
17 be a weapon had a capacity to kill.

18 In addition to forcible assault, the
19 law also makes it a crime to forcefully resist,
20 oppose, impede, intimidate and interfere
21 with a Revenue Agent in the performance of
22 his duties.

23 Now, while the Government has alleged
24 all of these acts in the indictment, as they
25 appear in the statute, it is not necessary

1 to prove that the defendant is guilty of
2 each and every one of them. It is sufficient
3 if you are satisfied, beyond a reasonable
4 doubt, that the defendant intentionally did
5 any one of the prohibited acts.

6 The word "intimidate" as used in the
7 statute simply means to make timid or
8 fearful, or to arouse or inspire or instill
9 fear in another.

10 There is no dispute that during the
11 period in question Shea was engaged in
12 auditing the books and records of Main
13 Chrysler, and that he was in the performance
14 of his official duties as an Internal Revenue
15 agent.

16 The two issues for you to decide, there-
17 fore, are elements three and four. Three
18 is whether the defendant forcefully assaulted,
19 resisted, opposed, impeded, intimidated or
20 interfered with Shea while he was engaged
21 in the audit and, four, whether, if he did,
22 he did so knowingly and intentionally.

23 Now, mere interference with the perform-
24 ance of a Revenue Agent's duties is in-
25 sufficient. It would have interfered with

1 Shea's duties if the defendant had locked
2 the door and said, 'Look, you can't come
3 in.' That would not be a crime.

4 The purpose of the law here is to insure
5 that a Revenue Agent will be free to discharge
6 his duties unfettered and unhindered either
7 by the use of force against him or by threats
8 of force against him. The law prohibits
9 not only the actual infliction of bodily
10 harm upon an agent, but also threats to
11 use force, if the threats are accompanied
12 by an apparent present ability to carry
13 them out by inflicting immediate bodily
14 pain, harm or even death. Force thus means
15 either the actual infliction of bodily harm
16 or the use of such acts, threats or displays
17 of physical aggression toward a person as
18 reasonably inspires fear of bodily harm.

19 The Government need not prove that the
20 threat to use force and violence was
21 explicit or expressed outright in so many
22 words. Implicit threats to use force are
23 also prohibited if the defendant has an
24 apparent present ability to inflict harm.

25 The law was not intended to apply only

1 to those persons naive enough to express
2 verbally the violent nature of their
3 intentions and to exempt those clever
4 enough to convey a violent message by
5 subtle hints, guarded language, veiled
6 threats or menacing gestures.

7 If accompanied by an apparent present
8 ability to inflict bodily harm, it is
9 enough if the defendant knowingly and
10 intentionally said or did anything to arouse
11 or instill fear in Shea of bodily harm if
12 he continued with the audit.

13 Words, phrases, acts and gestures take
14 their meaning as threatening or harmless
15 from all of the surrounding circumstances
16 in which they are used.

17 In deciding whether the defendant used
18 or threatened to use force against Shea,
19 you should therefore consider all of the
20 evidence bearing on what was said and done
21 during the period of the audit, particularly
22 at the time of the flashbulb picture incident
23 of August 7, and the gun box incident of
24 August 8.

25 Summarizing now, on Count I the essential

1 question for you is whether the defendant
2 knowingly and intentionally aroused or
3 instilled a reasonable fear of bodily harm
4 in Shea by creating an atmosphere of intim-
5 idation and threats of the use of violence,
6 combined with an apparent present ability
7 to carry out the threat. The fear must
8 arise from something said or done by the
9 defendant, rather than from mere timidity
10 on the part of Shea. It is not necessary,
11 however, for Shea to become terrified or
12 panic stricken or hysterical or show any
13 sign of fright. If you find that an ordinary
14 person in Shea's position would have been
15 put in fear of immediate bodily harm from
16 anything that the defendant said or did,
17 under all of the circumstances, then you
18 should find that the defendant did instill
19 the requisite fear.

20 You will note that in describing the
21 elements of the crime charged in Count I,
22 I have said that the defendant must have
23 acted knowingly and intentionally. Now,
24 this does not mean that the defendant must
25 be aware that his conduct is criminal or

1 that it violates any law of the United
2 States. It simply means that he must have
3 known what he was doing, that he was acting
4 freely and voluntarily, deliberately or on
5 purpose, and not because of some mistake,
6 accident, carelessness or other innocent
7 reason. The key to this element of the
8 crime is the defendant's guilty knowledge
9 and intent.

10 In determining the intent of the defend-
11 ant, it is obviously impossible to look into
12 his mind. However, intent and knowledge
13 may be inferred from a defendant's conduct,
14 his acts, his statements, and all of the
15 surrounding circumstances. Thus, the adage
16 "Actions speak louder than words" applies
17 here.

18 Count II of this indictment charges
19 that between July 15 and September 1, 1972
20 the defendant, Robert Sciolino, unlawfully
21 did by threats of force endeavor to intimidate
22 and impede Thomas Shea, who was engaged in
23 and on account of the performance of his
24 official duties, that is, the auditing of
25 the books and records of the Main Chrysler-

Charge of the Court.

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Plymouth Corporation.

Count II is based on a different law from Count I. The law involved in Count II provides:

"That whoever by threat of force endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity, under this title, shall be guilty of a crime."

This law prohibits interference with the performance of a duty by threat of force. It differs from the law which applies to Count I which, in addition to a threat of force, also requires an apparent present ability to carry out the threat by inflicting immediate bodily harm, but there is no such second requirement as to the crime charged in Count II. Here the crime is by threat of force, prohibit interference with the performance of a duty by threat of force.

The term "threats of force" as used in this statute or law, means threats of bodily harm to the agent or employee, here Shea, of the United States or to a member of his family.

1 In order to convict the defendant on
2 Count II, the Government must prove each
3 of the following elements beyond a reason-
4 able doubt:

5 (1) That the Revenue Agent, Thomas
6 Shea, was an employee of the United States
7 during July and August 1972, there is no
8 dispute about that;

9 (2) That he was acting in an official
10 capacity in performing the audit on Main
11 Chrysler-Plymouth during that period. Again,
12 there is no dispute about that;

13 (3) That while Shea was so engaged,
14 the defendant endeavored to intimidate or
15 impede him by threats of force, and, of
16 course, there is a dispute about that, and

17 (4) That the defendant committed the
18 prohibited acts knowingly and intentionally,
19 and there is a dispute about that.

20 Now, the word "endeavor" means to try
21 or any effort to intimidate or impede the
22 agent's discharge of his duties by threats
23 of force.

24 You will apply, in considering the
25 elements of this crime, my earlier

1 instructions as to the meaning of the
2 words intimidate, knowledge and intent,
3 force and threats of force.

4 You must consider each count of this
5 indictment separately. If, as to the count
6 which you are considering, you find that
7 the Government has failed to prove to your
8 satisfaction, beyond a reasonable doubt, all
9 of the elements of the crime charged in
10 that count, as I have defined them to you,
11 you must acquit the defendant on that count.
12 On the other hand, if, as to the count which
13 you are considering, you find that the
14 Government has proved to your satisfaction,
15 beyond a reasonable doubt, each of the
16 elements of the crime charged in that count,
17 as I have defined them to you, then you
18 should convict the defendant on that count.

19 You are instructed that the question
20 of possible punishment of the defendant,
21 in the event of a conviction, is no concern
22 of yours, and it should not in any sense
23 enter into or influence your deliberations.
24 The duty of imposing sentence, in the event
25 of a conviction, rests exclusively upon the

1 Court. The function of the jury is to
2 weigh the evidence in the case, and determine
3 the guilt or innocence of the defendant
4 solely upon the basis of such evidence.

5 When you retire to the jury room you
6 will treat one another with consideration
7 and respect, as I know you will. If differ-
8 ences of opinion arise, discussions should
9 be dignified, calm and intelligent. Your
10 verdict must be based on the evidence and
11 the law, the evidence which was presented
12 in this case, as you remember it, and the
13 law, as I have given it to you in these
14 instructions.

15 You are each entitled to your own
16 opinion. No juror should acquiesce in a
17 verdict against his conscientious, individual
18 judgment. Nevertheless, I would point out
19 that no one should enter the jury room with
20 such pride of opinion that he would refuse
21 to change his mind if convinced by an
22 intelligent argument on the part of another
23 juror or jurors. Discussions and deliber-
24 ations are at the very heart of our
25 democratic jury process, and your

Charge of the Court.

1 deliberations should be approached in that
2 spirit. Talk out your differences. Each
3 of you, in effect, should decide the case
4 for himself or herself after thoroughly
5 reviewing the evidence and frankly discuss-
6 ing it with your fellow jurors, with an
7 open mind and with a desire to reach a
8 verdict. If you do that, you will be acting
9 in the true democratic process of the
10 American jury system.

11 There are twelve of you on this jury.
12 Any verdict must be the unanimous verdict
13 of all of you as to each count, and it must
14 represent the honest conclusion of each of
15 you. I submit the case to you with every
16 confidence that you will fully measure up
17 to the oath which you took as members of
18 the jury, to decide the issues submitted
19 to you fairly and impartially, and without
20 fear or favor.

21 Now, members of the jury, if you find
22 that the Government has failed to establish
23 the guilt of the defendant beyond a reason-
24 able doubt, you should acquit him. If you
25 find that the defendant has not violated the

1 law, you should not hesitate for any reason
2 to render a verdict of not guilty. But,
3 on the other hand, if you find that the
4 Government has established the guilt of
5 the defendant beyond a reasonable doubt,
6 you should not hesitate, because of sympathy
7 or any other reason, to render a verdict
8 of guilty.

9 When you retire for your deliberations,
10 you should elect a foreman or forelady
11 from among your members, and the foreman
12 or forelady will return an oral verdict in
13 open court of guilty or not guilty on each
14 count.

15 Are there any exceptions, gentlemen?
16 If so, I will hear you at the side bar.

17
18 (Thereupon the following conference ensued
19 at the side bar:
20

21 MR. STEWART: None for the Government, your Honor.

22 MR. McDONOUGH: I have one, your Honor. I respectfully
23 except to that portion of your Honor's
24 charge at 24(), that this law prohibits
25 interference with the performance of a

1 duty by threat of force. It differs from
2 the law which applies to Count I which, in
3 addition to a threat of force, also requires
4 an apparent present ability to inflict
5 harm. There is no such requirement on
6 Count II. I respectfully except to that.
7 THE COURT: I note your exception. It comes from the
8 case you cited, Johnson.

9
10 (Thereupon the conference at the side bar
11 was terminated.)

12
13 (Thereupon two deputy marshals were duly
14 sworn.)

15
16 THE CLERK: Jurors, will you please rise and follow
17 the marshals?

18
19 (Thereupon the jury exited the courtroom
20 at 12:03 P.M., and the court was in recess
21 awaiting the return of the jury.)

22
23 (Thereupon the jury returned to the court-
24 room at 2:40 P.M.)
25

(Proceedings in chambers at 2:41 P.M.)

(Counsel present.)

THE COURT: I have a note from the jury: "We want to know which count is for the gun -- and then the rest of it -- or the photo taking." You can each read it. If you have some different construction of the handwriting, I would be perfectly willing to hear it.

MR. STEWART: I would read this as or.

THE COURT: Do you have any comment?

MR. McDONOUGH: I would just say the whole evidence is directed to both counts.

THE COURT: Okay.

(Proceedings resumed, pursuant to recess, commencing at 2:43 P.M.)

(Defendant present, counsel present, jury present.)

THE COURT: I have your note, which I have just read to the lawyers, so I won't repeat it in the record now. All of the evidence is directed

1 to both counts. The counts are not separate-
2 ly divided, one for the photo, the other for
3 the gun box. All of the evidence is directed
4 to both counts, and so that separation is
5 not to be made by you. Consider all of the
6 evidence on both counts. If you recall,
7 there were different standards of proof,
8 slightly different elements, between Count
9 I and Count II. That is because the law
10 in back of those counts are two statutes
11 involved, they have slightly different
12 elements. All right. They are separate
13 crimes, all the evidence is directed to
14 both of them.

15
16 (Thereupon the jury exited the courtroom
17 at 2:45 P.M., and the court was in recess
18 awaiting the return of the jury.)

19
20 (Thereupon the jury returned to the court-
21 room at 4:10 P.M.)

22
23 (Defendant present, counsel present.)

24
25 CLERK:

Ladies and gentlemen of the jury, have you

July Polled.

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23

1 agreed upon your verdict?

2 FOREMAN: Yes, we have.

3 CLERK: What is your verdict as to the defendant,
4 Robert S. Sciolino, on Count I?

5 FOREMAN: Not guilty on Count I.

6 CLERK: On Count II?

7 FOREMAN: Guilty.

8 CLERK: Please listen as the Clerk of the Court
9 records your verdict. You find the defendant,
10 Robert S. Sciolino, not guilty on Count I,
11 guilty on Count II.

12 FOREMAN: Yes.

13 CLERK: So say you all?

14

15 (Thereupon there was an affirmative response
16 by the jury.)

17

18 MR. McDONOUGH: May I request that the jury be polled as to
19 the verdict, your Honor?

20 THE COURT: Poll the jury, please.

21

22 (Thereupon the jury was polled, each juror
23 answering in the affirmative.)

24

25 THE COURT: I want to thank you for the careful

Discussion.

29

1 attention that you have given to the case,
2 and also for your patience and attention
3 to all of our work together. I will be
4 leaving you tomorrow and won't have the
5 pleasure of working with you again, I don't
6 suppose. It certainly has been a very
7 pleasant stay. I have enjoyed working with
8 the juries and lawyers in Buffalo. Goodbye.

9
10 (Thereupon the jury exited the courtroom
11 at 4:15 P.M.)

12
13 MR. McDONOUGH: The defendant moves to set aside the verdict
14 of guilty on the second count of the indictment
15 on the ground that it is contrary to
16 law, contrary to the evidence, contrary to
17 the weight of the evidence, and on all
18 grounds urged both at the close of the
19 prosecution's case and at the close of all
20 the evidence.

21 THE COURT: Motion denied. May 30th for sentencing,
22 ten-thirty.

23 MR. McDONOUGH: Yes, your Honor

24 THE COURT: Is there any application with respect to
25 bail?

Certificate.

245

30

1 MR. STEWART: No, your Honor, the present bail is satis-
2 factory.

3 THE COURT: The present bail is continued pending
4 sentence. I would like a presentence report.

5 MR. McDONOUGH: You said May --

6 THE COURT: May 30th at ten o'clock.

7 MR. McDONOUGH: Thank you.

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10 * * * * *

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14
15 I hereby certify that this record is a
true and accurate transcript from my
16 stenographic notes in this proceeding.

17
Official Reporter
U. S. District Court

AFFIDAVIT OF SERVICE BY MAIL

74-1826

1-9-74

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: The United States of America
v
Robert S. Sciolino
Docket No. 1973-137

I, Louis Cecere being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 8 day of July, 19 74
I mailed 3 copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

Robert C. Stewart, Esq.

Department of Justice

Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Peter L. Parrino, Esq.

778 Ellicott Square Building, Buffalo, New York 14203

Louis Cecere

Sworn to before me this

8 day of July, 19 74

Monica Shaw

MONICA SHAW
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1975